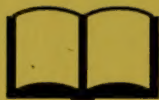


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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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14 SACRAMENTO, CALIFORNIA

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18 WEDNESDAY, FEBRUARY 19, 1992

19 1:55 P.M.

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25 Reported by:

26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
SENATOR WILLIAM CRAVEN, Vice Chairman
SENATOR ROBERT BEVERLY
SENATOR NICHOLAS PETRIS
SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR WADIE P. DEDDEH
WILLIAM E. TAINTER, Director
Department of Rehabilitation
JOE XAVIER, Elected Representative
Vendor Policy Committee
JOHN V. LOPEZ, Member
Board of Directors
California Council of the Blind
FRED HOUGARDY, Executive Director
Association of Retarded Citizens of California
TOM HUMPHRIES, Associate Dean
San Diego Community College District
BUDDY ALLRED
Signing Interpreter for Deaf
ELIZABETH BACON, Director
Disabled Student Services Program
San Diego State University
STANLEY GREENBERG, Ph.D., Executive Director
Westside Center for Independent Living

APPEARANCES (CONTINUED)

1
2 LES TREECE-SINCLAIR, President
Disabled in State Service

3 RALPH BLACK, President
4 California Association of Persons with Handicaps

5 NORMA JEAN VESCOVO, President
6 California Foundation for Independent Living Centers

7 KEN SEATON MSEMAJI, President
United Domestic Workers of America

8 PAUL BORELLI
Blind Vendor

9 FRANK ROMPAL, Chair
10 Vendors Organized in Communication and Education (VOICE)

11 ANITA BALDWIN, Executive Director
San Francisco Lighthouse for the Blind

12 FRANK D. BOREN, Member
13 Fish and Game Commission

14 MARK J. PALMER, Legislative Advocate
Mountain Lion Foundation
15 Planning and Conservation League

16 BONNIE F. GUITON, Secretary
State and Consumer Services Agency

17 LLOYD AUBRY, Director
18 Department of Industrial Relations

19 CHARLES J. REITER, Legislative Director
State Building and Construction Trades Council of
20 California

21 ARNOLD TORRES, Legislative Advocate
Number of Community-based Latino Organizations

22 DAN CURTIN, Director
23 California State Council of Carpenters

24

25

26

27

28

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
WILLIAM E. TAINTER, Director Department of Rehabilitation	1
Introduction by SENATOR WADIE DEDDEH	1
Qualifications	2
Organization of Comprehensive Service Center for Disabled Persons	2
First-hand Knowledge and Experience with Rehabilitation Process	3
Department Lead Agency in Implementation of Americans with Disabilities Act	4
Commitment to Consumer Participation	4
Business Enterprise Program	6
Arrangements to Return Exempt Entitlement Position to Vendor's Policy Committee	6
Independent Living Centers	7
Prospect of Budget Reductions	7
Possible Closure of Blind Orientation Center in Albany	8
Restoration of Funds in Budget	8
Questions by SENATOR MELLO re:	
Opposition of Blind Vendors	10
Resolution	10
Request for Testimony from Blind Vendors	10
<u>Witness in Opposition:</u>	
JOE XAVIER, Elected Representative California Vendors Policy Committee	11

1		
2	Issues in Resolution	12
3	Weekend Meeting Planned	12
4	Questions by SENATOR MELLO re:	
5	Remaining Issues to Be Worked Out	12
6	Lack of Consultation	12
7	Election Process	12
8	Retirement Program	12
9	Date of Election	13
10	Response by MR. TAINTER	13
11	Committee's Receipt of Formal	
12	Response to Resolution	13
13	Suggestion by SENATOR MELLO to Hold	
14	over until Weekend Meeting	14
15	Discussion	14
16	Counter Recommendation by CHAIRMAN ROBERTI	15
17	Questions of Witness by SENATOR MELLO re:	
18	Holding Nomination on Floor	16
19	Questions by SENATOR PETRIS re:	
20	Comment on Complaints by California	
21	Council of the Blind	17
22	Letter in Strong Opposition	17
23	<u>Witness with Concerns:</u>	
24	JOHN V. LOPEZ, Member	
25	Board of Directors	
26	California Council of the Blind	18
27	Director's Call on Pending Closure	
28	of Orientation Center for Blind	19
	Extention of Thanks to Legislature	19
	Statement Claiming that One Rehab.	
	Counselor Could Serve All Disabilities	20

1		
2	Need for Specialized Services	20
3	Hiring of Competent Staff	20
4	Endorsement of Confirmation	21
5	Urge Creation of Oversight Committee	21
6	Questions by SENATOR PETRIS re:	
7	Date of Decision to Endorse	22
8	Letter Dated February 19, 1992, Stating Opposition to Confirmation	22
9	Response by MS. MICHEL	24
10	Response by MR. TAINTER	24
11	Lack of Communication over Possible Closure of Orientation Center	25
12	Position Now of Organization on Confirmation	26
13		
14	<u>Witnesses in Support:</u>	
15	FRED HOUGARDY, Executive Director	
16	Association for Retarded Citizens of California	27
17	Needs of Developmental Disabilities Community	27
18	TOM HUMPHRIES, Assistant Dean	
19	San Diego College District and Board Member	
20	Deaf Community Services of San Diego	28
21	Goal of Standards of Higher Education for Disabled Community	29
22	BETTY BACON, Director	
23	Disabled Student Services Program	
24	San Diego State University	30
25	Involvement in San Diego	31
26	Basic Philosophy of Appointee	31
27	Creation of Coalitions	32
28	STANLEY GREENBERG, Executive Director	
	Westside Center for Independent Living	
	Los Angeles	34

1		
2	Member of California Council of the Blind	34
3	Commitment to Disability-specific Services	35
4	Commitment to Consumer Groups	35
5	LES TREECE-SINCLAIR, President	
	Disabled in State Service	36
6	Unanimous Endorsement of Confirmation	37
7	Involvement of Appointee in DISS	38
8	Efforts to Enhance Communication	
9	between Disability Groups	39
10	RALPH BLACK, President	
11	California Association of Persons with	
	Handicaps	40
12	Accomplishments of Disability Rights	
	Movement	40
13	Unemployment or Underemployment of	
14	Disabled Persons	40
15	Consumer Control and Client Participation	41
16	Request by SENATOR MELLO to Hold Roll Open	43
17	NORMA JEAN VESCOVO, President	
18	California Foundation for Independent	
	Living Centers	43
19	KEN SEATON-MSEMAJI, President	
20	United Domestic Workers of America	44
21	<u>Witnesses in Opposition:</u>	
22	PAUL BORELLI, Blind Client of DOR	45
23	FRANK ROMPEL, JR., Chairperson	
24	Vendors Organized in Communication	
	and Education (VOICE)	46
25	Lack of Consumer Friendliness to	
	Blind Vendors	46
26	Department's Lack of Response	
27	to Written Letters and Phone Calls	47
28	Requests for Application for the	
	Designation of State Licensing Agency	48

1		
2	Lack of Policy Manuals	48
3	Requests by CVPC Delegates for Member	
4	Addresses	48
5	Lack of Due Process in Filing Grievances	
6	over Election	49
7	Lack of Appeal Process	49
8	Salary of Exempt Position	50
9	Example Where Department Took Away	
10	Vending Machine Commissions from Blind	
11	Vendor	51
12	Appointee's Goal of Higher Education for	
13	Disabled Contrary to BEP Training Program	52
14	Questions by CHAIRMAN ROBERTI re:	
15	Policy Manual	53
16	Questions by SENATOR PETRIS re:	
17	Historical Lack of Policy Manual	54
18	Response by MR. ROMPEL	54
19	Provisions of Welfare & Institutions	
20	Code	55
21	Counsel's Opinion on Due Process	55
22	Request by MR. ROMPEL to Hold Confirmation	
23	until after CVPC Meeting	56
24	Reponse by CHAIRMAN ROBERTI re:	
25	Holding Confirmation on Senate Floor	
26	for Three Weeks	57
27	<u>Witness in Support:</u>	
28	ANITA BALDWIN, Executive Director	
	San Francisco Lighthouse for the Blind	57
	Questions by SENATOR PETRIS re:	
	Re-authorization of Federal Rehabilitation	
	Act of 1973	58
	Department's Involvement	59

1		
2	Benefits to Consumer	60
3	Changes in Program to Provide Tracking	61
4	Independent Living Center's Computer Program	61
5	Consumer Unfriendliness to CVPC	62
6	Lack of Grievance Procedure	63
7	Right of Vendors to Appeal	64
8	Motion	65
9	Committee Action	65
10	FRANK D. BOREN, Member	
	Fish and Game Commission	66
11	Qualifications	66
12	Original Founder of Southern California	
13	Chapter of Nature Conservancy	66
14	Need to Involve Private Sector	67
15	Questions by SENATOR PETRIS re:	
16	Major Problem of Commission	67
17	Massive Exodus of Companies out of	
	California Due to Environmental Regulations	68
18	Willingness to Give Legislature Guidance	69
19	<u>Witness in Support:</u>	
20	MARK PALMER	
21	Mountain Lion Foundation	70
22	Motion	71
23	Committee Action	72
24	BONNIE GUITON, Secretary	
	State and Consumer Services Agency	72
25	Qualifications	72
26	Previous Experience	73
27	Request by SENATOR PETRIS to Make Motion	74
28		

Questions by SENATOR PETRIS re:

Environmental Protection	75
Earth Conservation Corps	75
Impact on President Bush and Consumer Affairs	75
Outreach to Minority Communities	77
Conflict with Private Sector	78

Motion	79
--------	----

Committee Action	79
------------------	----

LLOYD AUBRY, Director Department of Industrial Relations	80
---	----

Qualifications	80
----------------	----

Background in Labor Law	80
-------------------------	----

Former State Labor Commissioner	80
---------------------------------	----

Added Enforcement Positions	80
-----------------------------	----

Rewrote Policy and Procedures Manual	80
---	----

Funding of Apprenticeship Standards Program	81
--	----

Increase in Cal-OSHA Penalties	81
--------------------------------	----

Convinced Governor not to Implement Cuts to Division of Workers Compensation	81
---	----

Actions to Increase Effectiveness of Labor Commissioner Despite Cuts	82
---	----

Support for SB 955 and AB 318	83
-------------------------------	----

Sweeps in Agriculture and Garment Industry	84
--	----

Questions by SENATOR PETRIS re:

Timely Hearings for Workers Comp. Applicants	85
---	----

Comparison to Past History	85
----------------------------	----

Witness in Support:

CHARLEY REITER, Legislative Director State Building and Construction Trades Council of California	86
Monthly Open Forum Meetings with Labor and Industry	87
Apprenticeship Program	87
Request to Explore Transition of DIR to an Expanded Department of Labor	88

Witness with Concerns:

ARNOLD TORRES, Advocate Various Hispanic Organizations	88
Series of Articles in <u>Sacramento Bee</u> on Plight of Farmworkers	89
DIR Investigations	90
Suggestion of Increasing Fees for Farm Labor Contractors to Fund Investigations	92
Former Farmworker in Sacramento	92
Recommendations in <u>Bee</u> Article	93
Request that Committee Accompany Confirmation with Letter Directing DIR to Submit a Clear Plan of Action to Respond to <u>Bee's</u> Recommendations	94
Service of Appointee on National Commission	95

Questions by SENATOR PETRIS re:

Comments on Article Recommendations	96
Membership on Commission on Agricultural Workers	96
Recommendation to Department of Labor to Pursue Greater Records	97
Steps in Trying to Deal with Farm Labor Contractor Problem	97

1		
2	Mail Audits	98
3	Use of 800 Number to Encourage	
4	Farmworker Calls	98
5	Interagency Task Force	98
6	Need to Have Worker Attempt to	
7	Identify Employer in Complaint to	
8	Establish Jurisdiction	99
9	Need for Procedures to be in Writing	100
10	Special Protections for	
11	Migratory Labor	100
12	Agriculture Sweeps	100
13	In-depth Investigations	101
14	Issue of Housing Addressed by	
15	Farmworkers Services Coordinating	
16	Council	102
17	Work with CRLA so Employees of	
18	Unlicensed Farm Labor Contractors	
19	Can Obtain Wages	102
20	Exclusion of Farmworkers from Protections	103
21	Need for Increased Effort	104
22	Veto of Bill to Provide Low Interest Loans	
23	to Farmers to Provide Housing	105
24	<u>Witness in Support:</u>	
25	DAN CURTIN, Director	
26	California State Council of Carpenters	105
27	Summation by MR. AUBRY	106
28	Questions by SENATOR PETRIS re:	
29	Fair Share of Jobs for Women in	
30	Construction Trades	106
31	Recommendation by SENATOR PETRIS that	
32	Letter Accompany Confirmation	106
33	Motion	107
34	Committee Action	108

1		
2	Termination of Proceedings	108
3	Certificate of Reporter	109
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
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CHAIRMAN ROBERTI: We now have the appointment of Mr. William E. Tainter, Director of the Department of Rehabilitation. Please come forward.

Senator Deddeh is here, and he would also like to say a word in favor of the appointment of Mr. Tainter.

SENATOR DEDDEH: Thank you, Mr. Chairman and Members of the Rules Committee.

In my nine years' career as a Senator, this is the second time that I have appeared before this august body on behalf of someone about whom I feel very strongly and very deeply and respect a great deal.

Bill Tainter, to me, is a personal friend. Not only that he comes from San Diego, but probably one of the most qualified persons for the job that the Governor has nominated in the Department of Rehab.

I just want, in a small way or a big way, however you want to interpret that, Mr. Chairman and Members, to say to you that I've known Mr. Tainter for a long time. He's an extremely competent, hard-working, decent, and committed person to do the best job he knows on behalf of those who need his help.

I am here to make that strong recommendation, Mr. Chairman, and I hope that my plea to the Committee will be seconded and get a five-zip recommendation to the Floor of the State Senate.

With that, I ask permission of the Chair to be

1 excused.

2 CHAIRMAN ROBERTI: Thank you very much, Senator, and
3 we're going to see you back in a minute or two, or maybe a half
4 hour.

5 Mr. Tainter, we'll ask you what we ask all the
6 Governor's appointees, and that is why you feel you are
7 qualified to maintain this position?

8 MR. TAINTER: Well, first I'd like to see thank you
9 to Senator Deddeh. I've known the Senator for quite some
10 time, and he's been very supportive of very significant issues
11 related to people with disabilities.

12 Thank you, Mr. Chairman and Members of the Rules
13 Committee. I appreciate this occasion to tell you a bit about
14 myself, and more importantly, my plans for the Department of
15 Rehabilitation.

16 First, I am very honored to have been selected by
17 Governor Wilson to serve as the Director to the Department of
18 Rehabilitation. The Department represents the vital link
19 between Californians with disabilities and the state. It
20 assures opportunities and viable options for working and living
21 independently in the community.

22 For the past 25 years, I have advocated that persons
23 with disabilities be given the opportunity to have a meaningful
24 role in and become contributing members of our society.

25 Upon graduating from San Jose State University, I
26 organized a comprehensive service center for persons with a wide
27 variety of disabilities. Then, in the mid-70s, I had the good
28

1 fortune to move to San Diego. During my 15 years there, I
2 served as the Executive Director of the Community Service Center
3 for the Disabled, an organization run by and for people with
4 disabilities.

5 Our Center was dedicated to significant community
6 change that empowers people with disabilities to lead
7 independent lives. The Center's programs service people,
8 regardless of their disability, and we served persons with
9 physical, mental, sensory and developmental disabilities. The
10 Center offered and continues to offer, a comprehensive array of
11 services that range from preventing institutionalization to
12 seeking meaningful, competitive employment in the community.

13 I am a well-known activist for programs and policies
14 for people with disabilities at the federal, state and local
15 level. This policies and programs enhance the capabilities of
16 people with disabilities and create greater opportunities for
17 their substantial involvement in the decision-making that
18 affects their lives.

19 And, of course, I am a Department of Rehabilitation
20 success story. As a former consumer of the Department of
21 Rehabilitation's services, I am well acquainted with the
22 rehabilitation process. I know the positive impact the
23 Department's educational and training services played in my own
24 life.

25 As a person with a life experience of multiple
26 disabilities, I am keenly aware of the positive messages the
27 Department of Rehabilitation can put forth about people with
28

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1 disabilities. The Department can and will play a major role in
2 improving attitudes towards people with varying disabilities.

3 Governor Wilson has designated the Department of
4 Rehabilitation as the lead agency in the implementation of the
5 Americans with Disabilities Act. The ADA is a landmark federal
6 civil rights legislation for people with disabilities. I take
7 that responsibility very seriously.

8 At my direction, the Department has developed a
9 comprehensive plan to implement the ADA. The Department will
10 work cooperatively and positively with small businesses and
11 major corporations throughout the state, as well as with
12 disability rights organizations and state and local agencies.
13 The ADA will help us heighten awareness of the benefits and
14 rewards of the full participation of persons with disabilities
15 in our society.

16 I strongly favor the involvement of disabled persons
17 themselves in decisions which directly affect their lives.
18 That is why I have brought to the Department, and promoted
19 within the Department, qualified individuals with disabilities
20 who share my belief in self-determination for themselves and
21 their peers.

22 This philosophy also translates into a strong
23 commitment to consumer participation in shaping the direction of
24 the Department. My mission for the Department is to optimize
25 the use of our vocational rehabilitation programs by
26 concentrating on serving those individuals who can most benefit
27 from our efforts; individuals who, without our services, could
28

1 not achieve meaningful roles in our society.

2 The Department of Rehabilitation has a responsibility
3 to serve Californians with a wide range of disabilities. In
4 accordance with federal law, I will continue on increasing the
5 services to persons with severe disabilities, including those
6 with physical, mental, sensory and developmental disabilities.
7 I will increase outreach efforts to identify presently
8 underserved populations that are eligible for help from
9 additional federal rehabilitation dollars.

10 I plan to continue to develop opportunities for
11 persons with developmental disabilities to attain their
12 potential for working in the community. Through the expansion
13 of additional services leading up to supported employment, the
14 Department will provide persons with developmental disabilities
15 greater support services to acquire and retain employment in the
16 most integrated community settings possible. The Department of
17 Rehabilitation has a key role to play in the continuum of
18 services for persons with developmental disabilities as spelled
19 out in the Lanterman Act.

20 I will also increase our efforts to assist consumers
21 with career planning and the implementation of long-term
22 rehabilitation plans that lead to meaningful careers. Part of
23 this assistance to consumers must include effective use of
24 assistive technology. I have already taken steps to develop a
25 comprehensive state plan for linking people with disabilities
26 with useful technology that fosters their independence in the
27 home, community and workplace.
28

1 As I have explained to Senator Mello, I am working
2 very hard to address the numerous problems in the Business
3 Enterprise Program. BEP is a federally sponsored rehabilitation
4 program in which blind and visually impaired business men and
5 women manage food service and other vending facilities in
6 government-owned and occupied buildings.

7 Vendors and Legislators are quite frustrated with the
8 Department, and I must tell you that I understand and share
9 their frustrations. For example, the Department is seriously
10 tardy in submitting two separate reports to the Legislature. I
11 assure you that the first report will arrive on your desks by
12 April 1st, and the other by May 29th.

13 I and my staff are working on several initiatives to
14 improve the BEP program. We have taken steps of late to
15 redirect and increase staffing in the program. At long last, we
16 are making materials available to vendors in Braille and other
17 accessible formats.

18 We are developing comprehensive regulations to govern
19 the program. It will incorporate procedures for electing vendor
20 representatives to the Vendor Policy Committee in regulations.
21 And I will soon be holding meetings with the Director of
22 Caltrans on roadside rest stop stands, and the Director of
23 General Services on equipment and leasing issues. These are
24 just a few of our BEP proposals.

25 On a final BEP point, I have made arrangements with
26 the Administration to return the exempt entitlement to the
27 Vendor's Policy Committee. We will work with the CVPC this
28

1 weekend to develop a duty statement and selection process to
2 fill this position. I hope to work closely with the Policy
3 Committee and its staff on further improvements to the BEP
4 program.

5 Now let me mention our Independent Living Centers.
6 As you know, independent living is a philosophy, a concept of
7 having people with disabilities take greater control over their
8 lives. The state's 27 or 28 Independent Living Centers are
9 valuable resources for achieving that goal.

10 The business of the Department of Rehabilitation is
11 to assist people with disabilities obtain employment and live
12 more independently.

13 When I first accepted this position, I faced the
14 prospect of reducing the Department's services by up to 25
15 percent. This was a particularly difficult task in that the
16 Department is primarily funded by federal vocational
17 rehabilitation dollars that must be matched by 25 percent state
18 General Funds. For each state dollar cut from our budget, we
19 would have lost three federal dollars.

20 I was compelled to produce a budget that would reduce
21 staffing by more than 450 persons -- one out of every four
22 Department employees -- and reduce consumer services dollars to
23 rehabilitation agencies by 25 percent. Those sizable cuts would
24 have seriously hurt all programs and services across all
25 disabilities.

26 Included in this budget reduction plan was a
27 comparable cut in funding to agencies serving the blind and
28

1 visually impaired, with the possible closure of the state-run
2 Orientation Center for the Blind in Albany. Closing the OC was
3 an undesirable option, but if we have to do so, we would have
4 made certain that similar services in Northern California were
5 still available, only in a non-residential, less costly way.
6

7 As a result of several discussions I had with him,
8 Governor Wilson understood and was troubled by the devastating
9 impact these cuts would have had on our constituency. He also
10 decided it was not wise to forego so much federal money by
11 reducing our budget.

12 Consequently, state matching funds for the Department
13 of Rehabilitation were restored. Fortunately, our programs and
14 services were maintained, and there were no staff layoffs.

15 And, the Governor's proposed budget reflects a
16 continuation of that commitment, including the preservation of
17 the Orientation Center for the Blind.

18 Although Rehabilitation is one of the smaller
19 departments in state government, it provides the most
20 significant impact of any department on the lives of persons
21 with disabilities. It alone offers viable options for living
22 independently and working competitively within the community.
23 Every dollar invested in rehabilitation services is returned in
24 tax dollars.

25 If I come to the Department with a particular
26 perspective, it is that I will encourage individuals with
27 disabilities, and organizations representing their interests, to
28 assist me. I welcome consumer participation at the Department

1 of Rehabilitation.

2 As a person with a disability, I feel that my life
3 experiences and those of others with disabilities are critically
4 important in assuring that the Department is responsive to
5 persons with all disabilities. Quite frankly, based on my
6 perception and experiences of other consumers, it is clear to me
7 that there's still much work to be done to improve attitudes
8 towards people with disabilities.

9 What we have discovered in the past few years, and
10 especially with the passage of the Americans with Disabilities
11 Act, is that working together, we can achieve a great deal in
12 improving the lives, the civil rights, and the quality of life
13 for persons and Californians with disabilities.

14 Thank you, Mr. Chairman and Senators. At this
15 point, I'll be happy to answer any questions you might have.

16 CHAIRMAN ROBERTI: Yes.

17 Are there any questions among the panel here?
18 Senator Mello.

19 SENATOR MELLO: Mr. Chairman, just very briefly, I
20 can't help but be impressed, I'm sure everyone is, with
21 Mr. Tainter's commitment and the way he's administered himself
22 in this job since he's taken possession.

23 He just recently spoke about his own disability,
24 which, you know, that allegation of impairment you can look at
25 and see visually, but many people can't see our own impairments
26 that are probably concealed within our own selves.

27 But what I want to point out to the Committee, and
28

1 I'm sure the Committee did get a copy, the only opposition that
2 I've received are the Blind Vendors that he alluded to. And I
3 appreciate Mr. Tainter's frequent meeting with me and other
4 representatives from the Blind Vendors.

5 They came up with a resolution that was passed
6 unanimously just last week. And, of course, Monday being a
7 holiday, I was trying to give Mr. Tainter some time to respond
8 to them so we could get their support. I think their support is
9 winnable.

10 Just since then, I think, Mr. Tainter announced that
11 this exempt position has been okayed by the Administration, that
12 you will be filling, you gave a date, sometime around the middle
13 of April. I think that's one of the concerns.

14 I don't know whether Blind Vendors are going to be
15 testifying today. If we had a few more days, I think we'd have
16 -- we could win their support over. I just don't know. I'm
17 looking for some direction here.

18 If we could hear some testimony from those there,
19 then maybe during the following week, we can have -- if we don't
20 mind putting it over for a week, we can have it just for vote
21 only, and I'm sure the vote would be unanimous, because I'm
22 hopeful we can eliminate what remains to be just some concerns
23 on the part of the Vendors.

24 CHAIRMAN ROBERTI: Why don't we hear from them first,
25 and then we'll try to make a decision on how the hearing will
26 proceed.

27 Is there anyone here -- I know there are a number of
28

1 people in support. However, I think I'm going to digress a
2 little bit and hear the people in opposition first, if Mr.
3 Tainter doesn't mind too much, to see how serious it is, if it
4 can be worked out, if we should put it over; put your
5 confirmation over for one week to see if maybe some of the
6 problems could be resolved. If not, we will, of course, hear
7 from your supporters, too, Mr. Tainter.

8 MR. TAINTER: Thank you.

9 CHAIRMAN ROBERTI: Is there anyone here in
10 opposition?

11 SENATOR MELLO: Mr. Joe Xavier. He's Chairman of the
12 Blind Vendors.

13 CHAIRMAN ROBERTI: Mr. Xavier, thank you for coming.
14 Please formally introduce yourself.

15 MR. XAVIER: I am Joe Xavier.

16 I'm not the Chairperson, Mr. Mello. I'm an elected
17 representative for the delegates of the committee.

18 Mr. Chairman, and Committee Members, and Mr. Tainter,
19 I regret that I'm here in this position. I would much have
20 preferred to be here in a position of support.

21 The delegates asked me to come here and present their
22 resolution to the Committee Members.

23 CHAIRMAN ROBERTI: This is the Blind Vendors?

24 MR. XAVIER: This is the Blind Vendors, yes, the
25 California Vendors Policy Committee, which is the blind vendors
26 under the Business Enterprise Program.

27 The issues that we outlined in that resolution were
28

1 issues of past track record. They were not necessarily issues
2 that are for the future. We looked at the past track record,
3 and that's where we came up with the issues on that resolution.
4

5 It's regrettable that we didn't have more time to see
6 the responses that I understand Mr. Tainter has made available
7 to the issues presented in that resolution. As
8 Mr. Tainter stated, we are meeting this weekend. I'm certain
9 that the Committee would like to address those issues at that
10 time.

11 I have not been given a mandate by the Committee to
12 make any decisions on their behalf without them meeting, so I'm
13 not able to do so.

14 SENATOR MELLO: Mr. Chairman, may I ask Mr. Xavier.

15 We have copies of the resolution. What are the
16 remaining issues, just briefly, that we want to get before the
17 Committee and that you feel have to be worked out?

18 MR. XAVIER: One of the main issues that the
19 resolution pointed out was the lack of consultation with the
20 Committee as was proscribed by regulation and law. Those issues
21 surfaced; election was one of them; retirement program was
22 another, and there were several others, as well as the
23 entitlement exempt position that existed. Mr. Tainter
24 mentioned the roadside, and that's also related to the issue of
25 -- consult issue with the Committee and taking --

26 SENATOR MELLO: Could we take these one at a time,
27 just very briefly.

28 Now, I understand the election, the date of the

1 election has been set. Has that been set already?

2 MR. XAVIER: Actually, the election has taken place;
3 it has been completed.

4 According to our bylaws, which the regulations
5 recognize, it was to have commenced October 1 and be concluded
6 by November 25th of 1990. This was to allow the Committee to be
7 in place, to meet at the beginning of 1992. This did not take
8 place. The elections were not concluded until the 29th of
9 December, and at that time, a third of the districts were not
10 represented due to various reasons.

11 SENATOR MELLO: So, in talking to Mr. Tainter, that
12 has been agreed to, but there will be annual elections.

13 MR. TAINTER: The election is completed.

14 In your packet is a response to each of the CVPC
15 concerns and so on.

16 The election was held up for various reasons. I must
17 say, I think the primary reason was my efforts in working in the
18 budget crisis area, and then, we did bring in a deputy director
19 from -- who was appointed in September, and that was her highest
20 priority. And then we wanted to be certain that the election
21 was done in a fair and impartial manner. And I think we have
22 the results now that do reflect that level of impartiality.

23 The Vendors are now in place, and they'll be holding
24 their meeting, I believe, on Friday and Saturday.

25 SENATOR MELLO: Perhaps, Mr. Xavier, your group has
26 not been -- formally had the responses made by Mr. Tainter to
27 your resolution; is that correct?
28

1 MR. XAVIER: I understand that there was an attempt
2 to get a response to all the delegates as of yesterday. I was
3 not able to speak with all of them. They are scattered all over
4 this state.

5 The few that I spoke with had either been contacted
6 to have them FAXed to them, or had heard them on the 800 number
7 that's available as an information number from the Department.

8 However, we're not able to meet in an official
9 capacity until this weekend. And so, we have not as a body sat
10 down and addressed the issues, no.

11 SENATOR MELLO: Mr. Chairman, I think the dilemma
12 we're in is either, if we were to take action at this point, we
13 would not be given the opportunity of Mr. Tainter and the Blind
14 Vendors to formally talk about the exchange and the responses.
15 But hopefully, after this weekend meeting, if they find
16 satisfaction in his responses and work it out, I'm sure that
17 they would be in a mood to find his confirmation, perhaps, very
18 positive rather than, at this point --

19 CHAIRMAN ROBERTI: Our normal procedure, Senator
20 Mello and Mr. Tainter, is that if a Member of the Committee
21 requests that an appointment be put over for a week or two
22 weeks, we defer to the Member's request.

23 What is the final date, I would like to ask the
24 consultant, for Mr. Tainter to be heard?

25 MS. MICHEL: We have time. It's April 3rd.

26 SENATOR MELLO: Mr. Chairman, let me point out, I
27 certainly don't want to ask for a delay for purposes of just a
28

1 delay.

2 I want to ask Mr. Tainter if he would appear to
3 concur with this delay to give you some more time to work with
4 the Vendors in order to try to garner their support? Would you
5 have any objection to a week or two weeks' delay?

6 MR. TAINTER: Throughout my career, we have worked
7 with consumer groups. That's basically my philosophy, is that
8 people with disabilities ought to have the maximum involvement
9 in programs that affect their lives.

10 I feel confident that we could work out a situation
11 with the CVPC where we could, hopefully, reach consensus on a
12 number of the issues that affect their programs.

13 I don't think necessarily we need to delay the
14 hearing in order to do that. I mean, you can have my commitment
15 that we're going to work on that.

16 SENATOR MELLO: Well, I think that's up to the
17 Committee.

18 CHAIRMAN ROBERTI: Senator, I will defer to your
19 request; however, let me make a counter recommendation.

20 We could hold the appointment on the Floor for three
21 weeks, more than our normal time, which is usually two weeks, to
22 give you a chance to talk to people who have legitimate
23 concerns, and at the same time, not to unduly delay Mr.
24 Tainter's appointment, where I sense there is an affirmative
25 feeling on the Committee.

26 Is that okay with you Senator?

27 SENATOR MELLO: Yes.
28

1 Let me ask Joe here, if that were to take place, in
2 other words, if we voted him out today, then if this opposition
3 still continues on, if the Committee felt they'd want to take
4 another look at perhaps getting some additional --

5 CHAIRMAN ROBERTI: We're always free to re-refer the
6 appointment, not necessarily with prejudice, but to re-refer the
7 appointment back to the Committee.

8 SENATOR MELLO: So, Joe, what I think we're
9 explaining to you is, the other option would be to put Mr.
10 Tainter's appointment out today with the idea that if this
11 weekend meeting, or other subsequent meetings, don't appear to
12 resolve the differences, then we have the right to re-refer his
13 appointment back to the Committee, at which time we could then
14 look at any ongoing opposition you may have and try to get them
15 worked out.

16 Does that meet with your approval then?

17 MR. XAVIER: I think that's a fair situation.

18 SENATOR MELLO: With that, Mr. Chairman, I think
19 we'll just continue with the hearing.

20 CHAIRMAN ROBERTI: Thank you, Senator Mello.

21 Thank you, Mr. Xavier.

22 MR. XAVIER: That you, the Committee, for your time.

23 CHAIRMAN ROBERTI: Senator Petris.

24 SENATOR PETRIS: I'm not clear. Are we terminating
25 the hearing now?

26 CHAIRMAN ROBERTI: No, no. We're going to proceed,
27 and if Mr. Tainter's appointment is recommended to the Floor, I
28

1 will hold it on the Floor for at least three weeks, more than
2 our normal period of time, unless, of course, the opposition is
3 removed, in which case we could proceed with more dispatch.

4 SENATOR PETRIS: May I ask some questions?

5 CHAIRMAN ROBERTI: Yes.

6 Senator Petris has questions, then we'll take support
7 witnesses.

8 First of all, Mr. Tainter, I had the same reaction as
9 Senator Mello when I learned of your appointment. I thought it
10 was terrific, and I'm glad that the governor followed the
11 precedent established by Governor Jerry Brown, who never got
12 much credit for any of the good things he did, who was the first
13 to appoint a disabled person to head the whole Department.

14 Since that time, we've received some letters of
15 opposition, one of them is the California Council of the Blind.
16 I'd like you to comment on their complaints.

17 MR. TAINTER: It's my understanding that there are
18 representatives from the California Council here today, and I
19 believe that we have worked very vigorously in trying to resolve
20 whatever kinds of difficulty that we have had in the past with
21 the CCB, and I think we've managed to do that.

22 SENATOR PETRIS: Then I'd like to have them confirm
23 that, because I spent an awful lot of time reading their letter.
24 The only thing in the letter is that you did have a meeting with
25 them in January, but they claim in the letter that doesn't
26 resolve everything. They feel that there's a very strong bias.

27 You've done so well in the general disability
28

1 categories, including your work with Independent Living Centers,
2 that they felt you have a very narrow outlook that is limited to
3 them, and you're shortchanging the people that have the other
4 disability of being blind. And they give several examples.

5 Now, if the Council is represented here, perhaps they
6 could come forward and shorten this or clarify it.

7 MR. TAINTER: I tried to address those issues in my
8 opening remarks.

9 I think a number of the budget drills we went through
10 were going to greatly impact services across the board, and in
11 particular, some of the services to the blind. But fortunately,
12 we got through that.

13 SENATOR PETRIS: They indicate they understand for
14 cuts, but they call this obliteration, such as a move to close
15 down the Orientation Center, and so forth.

16 Maybe we can save time by having this witness speak
17 to that.

18 Is this Mr. Acosta?

19 MR. LOPEZ: No, this is John Lopez.

20 Mr. Chairman and Members of the Senate Rules
21 Committee, my name is John V. Lopez. I am a member of the Board
22 of Directors of the California Council of the Blind.

23 The California Council of the Blind is our nation's
24 largest statewide organization of the blind with a membership
25 numbering in the thousands.

26 July 19th, 1991 will be remembered as a day of infamy
27 by the blind of this state. On that date, Director Tainter's
28

1 office called to inform us of the pending closure of the
2 Orientation Center for the Blind and other programs for the
3 blind due to the budget crunch. The Orientation Center for the
4 Blind has been in existence for over 41 years. It helps the
5 newly blind to adjust to this challenging disability.

6 In a later letter to our President, Director Tainter
7 informed him that blind people could learn mobility in these --
8 in their local communities. Mr. Tainter did not realize that
9 the Orientation Center does far more than teach mobility to its
10 students. On a 24-hour basis, the Center in Albany helps to
11 shape up a newly blinded person's self-esteem about himself.

12 Throughout the summer, Mr. Tainter told various blind
13 groups that the closure of the Center was a done deal. He told
14 us to stop it if we could.

15 We believe that it is less than a coincidence that
16 Mr. Tainter waited until July 19th, the last day of the summer
17 session of the Legislature, to drop his bombshell. However, he
18 did not reckon with the energy, enthusiasm, and commitment of
19 the blind of California and of the California Council of the
20 Blind. He did not count on the good will of our State
21 Legislature. Together we were able to save not only the Center,
22 but the other worthwhile programs for the blind funded by the
23 Department of Rehabilitation.

24 The California Council of the Blind today wishes to
25 extend its thanks and gratitude to the 70 Legislators who signed
26 Senate Joint Resolution 57, which asked the Governor to save the
27 Orientation Center for the Blind. Thanks to you, we were
28

1 successful.

2 I first heard Mr. Tainter at our spring convention in
3 May of 1991. At that time, he shocked our membership by
4 referring to us as segregationists, by calling our services
5 segregated programs.

6 I can assure this Committee that we are not
7 segregationists. Since 1934, the California Council of the
8 Blind has been an advocate for civil rights for all disabled
9 Americans.

10 Mr. Tainter believes in the shake-and-bake method of
11 serving disabled Californians. He has made statement claiming
12 that a rehabilitation counselor could adequately serve all
13 disabilities with equal skill. I submit that should Mr. Tainter
14 turn to this generic approach, that the disabled community would
15 be served by counselors who would be jacks of all trades and
16 masters of none.

17 The blind will never accept such a generic approach.
18 We demand specialized services which will enable us to compete
19 in an integrated world. Give us the skills, and we shall be
20 productive citizens in this great nations. But give us
21 counselors unfamiliar with our true problems, and we are
22 destined to sit on the welfare rolls of California.

23 After getting our message, Mr. Tainter began to hire
24 competent staff who began to listen to our concerns. Brenda
25 Primo heads the division which houses the section for the blind
26 and is generally doing a fine job. The Director has become
27 aware of the need to work more closely with the Program Manager
28

1 for the Blind because, he himself blind, is the Department's
2 greatest expert on blindness. Mr. Tainter has made many promises
3 to give the Program Manager for the Blind greater authority so
4 that his expertise can be put to better use than in the past.
5

6 In 1981, the blind of California caused to pass
7 through the Legislature a law which makes the position of
8 Program Manager for the Blind statutory. We trust the Program
9 Manager for the Blind.

10 Throughout the month of January, 1992, the Director
11 and our President have been communicating. The Director has
12 issued two written communications to our President, making many
13 commitments which, if done, will enhance services for the blind.

14 With this background in mind, the California Council
15 of the Blind now endorses the confirmation of Mr. William
16 Tainter as the Director of the Department of Rehabilitation. We
17 do this with one admonition: the blind of California and the
18 State Legislature must never allow a Director of the Department
19 of Rehabilitation to make the decision to abolish programs for
20 the blind in a vacuum.

21 When Mr. Tainter dropped his bombshell on us on July
22 19th, he had not spoken to the blind community about his
23 contemplated actions. Certainly, he did not seek the wisdom of
24 the State Legislature.

25 I urge the Legislature to create an oversight
26 committee which shall force the Director to come to the table
27 and at least talk with them before making such drastic decisions
28 affecting the lives of the blind of California. This oversight

1 committee could include Legislators and disabled persons, and
2 our suggestion should certainly be expanded to include all
3 aspects of rehabilitation and to involve representatives of the
4 disabled community.

5 We are pleased to endorse Mr. Tainter, and we look
6 forward to working with him constructively to improve service
7 delivery to the blind of California.

8 Thank you.

9 CHAIRMAN ROBERTI: Thank you very much, Mr. Lopez. I
10 think Senator Petris has a question of you.

11 SENATOR PETRIS: Yes, if you don't mind having a
12 seat.

13 Your group has managed to throw a lot of sand in our
14 face and cause a lot of confusion, and I need your help in
15 clearing it up.

16 When did your group reach the decision to endorse?

17 MR. LOPEZ: It has been reached in the last few days
18 when our President, Mr. Robert Acosta, received, like I said in
19 my statement, some written letters which offered some
20 commitments.

21 SENATOR PETRIS: I may call your attention to this
22 letter I have from Mr. Acosta dated today. I won't read the
23 whole letter, it's very lengthy, but among other things it says
24 on Page 4 -- Page 5, excuse me; now we're way down to Page 5,
25 and it says:

26 "It is for all these reasons,
27 and more, that the California
28

1 Council of the Blind must oppose Mr.
2 Tainter's confirmation as Director
3 of Rehabilitation."
4

5 Now, that letter is dated today. It might have been written
6 a month ago, but the date is today.

7 "Our convention instructed me to do
8 so at our November meeting, and
9 nothing has occurred since that time
10 which can lead to any other
11 conclusion. To be sure, Mr. Tainter
12 asked for a meeting with us, and we
13 did meet on January 13. As usual,
14 we were prepared to explain to Mr.
15 Tainter what steps he might take to
16 begin the process of bringing
17 confidence back, and provided him
18 with a virtual laundry list of
19 options, any one of which would
20 indicate a willingness on his part
21 to be open to our point of view."

22 Then it goes on to list five steps that he should take, and
23 then it goes on to say that none of them is "earth
24 shattering", but each one is helpful. And the letter seems
25 to indicate none of them has been followed.

26 Apparently there's some miscommunication within the
27 organization. I don't know what Mr. Acosta would say if he
28 were here. I assume that you're speaking with his approval

1 and authorization as the President.

2 Can you clarify this for me?

3 CHAIRMAN ROBERTI: Mr. Lopez, then I'm going to ask
4 the consultant to also speak to the issue.

5 MS. MICHEL: It's postdated, Senator Petris. The
6 receipt date, we have a receipt date in our file on that
7 letter of February 7th.

8 SENATOR PETRIS: February 7th? It is dated the
9 19th.

10 MS. MICHEL: It is dated the 19th, but we received
11 it in Rules Committee on February 7th.

12 CHAIRMAN ROBERTI: Maybe that's Mr. Lopez's
13 recollection, too.

14 MR. TAINTER: Senator, I understand that in your
15 packet there is a letter from Mr. Acosta that essentially
16 talks about some of the issues that we have been working on
17 in the last couple of weeks and that we have reached
18 consensus on.

19 SENATOR PETRIS: We don't have such a letter in our
20 particular office; maybe some of the others do.

21 Now mind you, I'm not trying to preserve the
22 controversy, but the letter is so damaging and so specific
23 that I don't understand what happened all of a sudden.

24 Now, if it was written on the 7th, then you had a
25 bunch of meetings since then, that's fine, and I'm happy to
26 hear it. And I'll, of course, yield --

27 MR. TAINTER: My understanding is that we reached
28

1 an agreement along the lines of what Mr. Lopez has just
2 discussed. That's my understanding.

3 SENATOR PETRIS: You're commitment --

4 MR. TAINTER: That we have reached a consensus on
5 those issues that we would address, and that we would expand
6 the role of the Program Manager for the Blind, and a number
7 of other issues.

8 SENATOR PETRIS: That includes, I assume, better
9 communication or --

10 MR. LOPEZ: Yes, definitely.

11 SENATOR PETRIS: -- because one of the problems
12 they point to in the closing of the Orientation Center, there
13 was no meeting whatsoever with the people of the Council, or
14 any other others, to assess the impact of a move of that
15 kind. It was just announced, period, and it took them by
16 surprise.

17 But anyway, if you're --

18 MR. TAINTER: This was a budget drill that we were
19 forced to go through on many occasions to try to compensate
20 for the \$14 million, and indeed --

21 SENATOR PETRIS: The Governor's done some budget
22 drills that we haven't taken too kindly to, as you know. So,
23 I'm not impressed with a budget drill.

24 I want to know who's getting drilled.

25 MR. TAINTER: Nobody got drilled in this regard.

26 SENATOR PETRIS: Okay.

27 Well, Mr. Chairman --
28

1 MR. TANTER: It just goes to show you that if the
2 Legislature is interested in cutting programs across the
3 board, we can't do it with Rehab., because we were proposing
4 a \$6 million cutback that ultimately led to a quarter of our
5 staff being laid off and \$30 million cutbacks.

6 I mean, there were no desirable options there with
7 those kinds of drills.

8 SENATOR PETRIS: Let me ask Mr. Lopez --

9 MR. TANTER: It didn't happen, though. That's the
10 important thing.

11 SENATOR PETRIS: The organization's position now is
12 that you endorse. Does that mean you support him?

13 MR. LOPEZ: Yes, we do.

14 SENATOR PETRIS: You urge an aye vote on his
15 confirmation, and you've worked out your differences?

16 MR. LOPEZ: Yes, we did. According to our
17 President Acosta, he did talk to Director Tainter and there
18 were some things discussed. We were offered some options,
19 and obviously, we are happy enough to work with him, and
20 happy that he's willing to be a little more flexible. And
21 with some reservations, we are willing to go along with that,
22 and hopefully, we can work in constructive ways.

23 Now, if there's any letters that the Committee must
24 have that are available in the California Council, then we'd
25 be happy -- in fact, I'll tell our President Acosta to
26 immediately mail them to the Committee explaining our change.

27 SENATOR PETRIS: Thank you.
28

1 MR. LOPEZ: You're very welcome.

2 MR. TAINTER: Mr. Chairman.

3 CHAIRMAN ROBERTI: Thank you again, Mr. Lopez.

4 Yes, sir.

5 MR. TAINTER: Could I have some of my people come
6 up and talk? They're going to have to leave for San Diego
7 and so forth.

8 CHAIRMAN ROBERTI: Yes. We're going to ask for
9 witnesses in support of Mr. Tainter's confirmation. Please
10 come forward.

11 MR. HOUGARDY: Mr. Chairman, Members of the
12 Committee, my name is Fred Hougardy. I'm the Executive
13 Director of the Association for Retarded Citizens of
14 California. The ARC of California is the oldest and largest
15 group advocating for people with mental retardation and their
16 families, as you well know.

17 After Governor Wilson's appointment of Mr. Tainter,
18 concern was expressed within the developmental disabilities
19 community regarding Mr. Tainter's perceived philosophy and
20 attitude about the DD population and its needs and
21 priorities. Apparently some of this concern still lingers.

22 ARC California, however, believes that Mr. Tainter
23 has become sensitized to the needs of the developmental
24 disabilities community and his responsibility to these
25 consumers as specified by the Lanterman Act. In particular,
26 Mr. Tainter has said he supports consumer involvement, which
27 we believe is the very foundation of the DD movement.
28

1 Based on this, ARC California supports his
2 nomination and respectfully requests the Committee to confirm
3 Mr. Tainter as Director of the Department of Rehabilitation.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Is there anyone else in support? Please come
6 forward.

7 MR. HUMPHRIES [through signing interpreter BUDDY
8 ALLRED]: Mr. Chairman, Senators, thanks for the opportunity
9 for me to speak in support of Bill Tainter. My name is Tom
10 Humphries. I'm an Assistant Dean for the San Diego College
11 District and Board member of the Deaf Community Services of
12 San Diego.

13 I'm responsible for services to over 350 deaf
14 students and about 300 students with other disabilities.

15 I'm also a member and past chair of a large
16 community service agency in San Diego, serving several
17 thousand hard of hearing people. I am a past member of the
18 Board of Directors of the Community Service Center for the
19 Disabled, where Bill Tainter was the Director.

20 I've known Mr. Tainter for ten years, and I'm
21 totally confident in Mr. Tainter's ability and his vision.
22 He an able administrator. He has vision; his vision of
23 independent living has been one that I also share. Mr.
24 Tainter does not make value judgments about whether or not a
25 person with a disability can be independent. He knows that
26 these disabled persons can be, and Mr. Tainter has personally
27 done more for -- to help people with disabilities to become
28

1 independent than anyone I know.

2 Mr. Tainter does not just theorize and philosophize
3 about disabilities, about rehabilitation. He for many years
4 has served on the front lines and managed programs,
5 advocated, and broken new ground. All of his experience is
6 first-hand. I know he is doing and will bring to the job
7 practical and real knowledge, and that will go along with his
8 commitment and understanding of what people with disabilities
9 face in becoming full citizens and taxpayers in California.
10 You will not find a Director with more knowledge of what
11 people with disabilities go through in our society and what
12 their needs and abilities are.

13 I am also confident that Mr. Tainter understands
14 that people with different disabilities are different, and
15 that they will have different goals and different ways of
16 reaching those goals. Mr. Tainter understands that when he
17 was in San Diego, when he worked as -- we worked side by side
18 and cooperatively with Deaf Community Services and with the
19 deaf community in general. He knows and he supports the
20 concept that every disability group knows that is right for
21 themselves.

22 Mr. Tainter has been an administrator for a few
23 months, and he already -- and we have already seen that he
24 will put the Department of Rehab. on the right course. He
25 will be essential to the State of California in the beginning
26 of the Americans with Disabilities Act.

27 His set goal of standards of higher education for
28

1 people with bad disabilities is one of the most important
2 emphasis I have already heard from the Department of Rehab.
3 in eight years. His goal of expanding cooperation between
4 the Department of Rehab. and higher education will mean
5 greater cost effectiveness and maximum service for many, many
6 people with disabilities.

7 As a disabled person and as a professional in
8 education and social services, I'm excited about Mr.
9 Tainter's appointment. I strongly encourage your
10 confirmation. Thank you for your support.

11 I have copies if any of you would like them. If
12 you have any questions, I'd like to answer them.

13 CHAIRMAN ROBERTI: Are there any questions?

14 Thank you very much.

15 Other witnesses please come forward.

16 MS. BACON: Hello. My name is Betty Bacon. I'm
17 from San Diego, and I'm here as an individual who has known
18 Bill Tainter for many years, probably more years than we want
19 to try to count up right now.

20 I've known Bill as a friend, as a colleague, and
21 have worked closely with him during the time that he
22 established the Independent Living Center in San Diego, as a
23 member of his Board of Directors on the founding Board.

24 When Bill started the agency, it was a tiny little
25 organization with three or four phone lines and a store
26 front. And it has grown from that time into perhaps the
27 largest Independent Living Center in the state, serving a
28

1 couple thousand clients a year.

2 But that's not all that Bill did in San Diego. He
3 was very involved in the community. He established a high
4 profile in San Diego, and he used his particular personal
5 awareness and his unique presence to bring disabled people
6 into the consciousness of a very diverse group of community
7 leaders: our city council; our transit authority, and many,
8 many others.

9 Bill has a basic philosophy that he operates from.
10 It's a philosophy, by the way, that I share. He believes
11 that people with disabilities have the right to have some
12 control over the destinies that they seek, and that the
13 agencies that we establish in our community, and the
14 awareness that we promote in our community is intended to be
15 in support of our efforts to seek and control our futures. I
16 suspect that that commitment comes in part out of his own
17 personal involvement in finding his destiny when he was a
18 younger man in San Francisco.

19 Excuse me. I got a little nervous after I got up
20 here. That doesn't usually happen to me.

21 This is real important, I think, to all of us. I
22 guess I want you to hear that Bill also has as his philosophy
23 a belief that disabled people are expected and intended to
24 support each other. And that's a very basic underpinning of
25 everything that I've known him to be working on. It's
26 manifested in the basic philosophy of the Independent Living
27 Centers that are based on the idea that appears work with
28

1 each other and support each other in resolving concerns and
2 difficulties.

3 It's also been a part of his philosophy to create
4 coalitions of disability groups where ever he has gone. The
5 Board of Directors that I served on, which was part of the
6 Independent Living Center, was a very diverse Board, and it
7 was made up of folks with visual impairments, hearing
8 impairments, mobility limitations, representatives from the
9 developmentally disabled community, and a wide spectrum of
10 people with disabilities.

11 I think the other point to make is that the
12 Americans with Disabilities Act has been an example for us of
13 what we can accomplish when we work together in coalitions.
14 For anything that we might give up in the way of separate
15 programs, we gain many times over by our combined mutual
16 strength.

17 Bill's a strong leader. He is very well respected
18 out here in the disabled community. Since he has taken
19 office, there has been, where I work, an air of expectation,
20 a new sense of hopefulness about working with the Department.
21 This is a change from the past. In previous years, the
22 Department has been viewed by its clients with a kind of
23 cautious skepticism at best, and it has sometimes been viewed
24 as an adversary to achieving personal goals. The need for
25 advocate to approach the Department has been a part of the
26 pattern in the past.

27 We experience an excitement now in the disabled
28

1 community by individuals like myself, by consumers of the
2 service, by potential clients, that there's a change coming
3 for disabled people. A new Department of Rehab. is emerging.

4 Now, one example of this, in my professional role,
5 I am the Director of the Disabled Student Services Program at
6 San Diego University. And I have watched students go through
7 that program for many years. We've had a very minimal
8 support by the Department of Rehab., for clients who were
9 seeking Bachelor's Degrees, and I understand now that there
10 will be increased support for those students. I'm really
11 excited to hear that, because I believe that that's part of
12 what California should be accomplishing.

13 I don't know how you can find anybody better for
14 this job, truly, than Bill Tainter. I -- it's not just a job
15 for him. This is his life philosophy that he is living his
16 philosophy. He is an example of his philosophy. He and I
17 are both products of the Department of Rehab., successful, we
18 hope, working and paying our taxes.

19 Bill brings his personal experience, his commitment
20 and his philosophy to this job in a way that I can't imagine
21 anyone else doing. I think that the Governor made a very
22 correct choice by appointing him to this position, and I
23 trust that you'll do the same in confirming him.

24 Thanks. I'd be glad to answer questions.

25 CHAIRMAN ROBERTI: Thank you very much for your
26 very impressive testimony.

27 Are there any questions? There are no questions,
28

1 thank you.

2 It's 3:00 o'clock. We normally take a ten-minute
3 break, so we're going to take a ten-minute break.

4 [Thereupon a brief recess was taken.]

5 CHAIRMAN ROBERTI: The Committee will come to
6 order.

7 Our next witness, please. Identify yourself.

8 DR. GREENBERG: Thank you, Mr. Chairman.

9 My name is Stanley Greenberg. I'm Executive
10 Director of the Westside Center for Independent Living at
11 12901 Venice Boulevard in Los Angeles.

12 I am blind and have been blind since birth. As a
13 person with a visual impairment, I've received both education
14 and rehabilitative services from both state and private
15 agencies.

16 I feel eminently qualified to provide testimony to
17 this Committee based on my experience as a professional in
18 the field of disability, my role as a member of the
19 disability community, and my status as a recipient of
20 disability services.

21 I might also add that I am a member in good
22 standing of the California Council of the Blind.

23 The purpose of this testimony is to make you aware
24 of my unequivocal and uncategorical support of William
25 Tainter as Director of the California State Department of
26 Rehabilitation. In my opinion, Mr. Tainter is eminently
27 qualified to fill this position and to serve with distinction
28

1 people with disabilities living in California.

2 Mr. Tainter has demonstrated through service and
3 example his commitment to two seemingly opposite but totally
4 compatible realities. First, people with disabilities need
5 categorical, disability-specific services in order for us to
6 take our rightful place as equally valued members of society.
7 Second, all people with disabilities must work together in
8 order for us to achieve our common goal: that of full
9 inclusion in every aspect of the life of our culture. The
10 programs which Mr. Tainter supports address both of these
11 realities.

12 There is, however, another aspect of Bill's ability
13 which makes him an outstanding Director for the Department of
14 Rehabilitation. He recognizes that he is a member of a team.
15 In that role, he accepts the responsibility to bring the
16 concerns of all people with disabilities to that team and to
17 exert maximum influence to affect the difficult decisions
18 which must be made. In some cases, and God knows, we've
19 experienced them very recently, the choices may place him in
20 a no-win situation, but we believe he's up to the task.

21 Finally, most of us in the disability community
22 have been very critical of the recent policies and
23 practices of the Department of Rehabilitation. We believe
24 that Mr. Tainter is both willing and able to lead the
25 Department toward addressing more appropriately the
26 challenges faced by people with disabilities in the 1990s.

27 I urge you to recognize that the overwhelming
28

1 majority of people with disabilities in California support
2 Mr. Tainter's appointment as Director of the Department of
3 Rehabilitation, and I urge you to confirm that appointment.
4

5 Thank you. I have written testimony here in print
6 and in Braille for those who have a choice.

7 CHAIRMAN ROBERTI: Thank you very much for your
8 testimony.

9 DR. GREENBERG: I'd be happy to answer any
10 questions.

11 CHAIRMAN ROBERTI: Any questions? Hearing none,
12 thank you very much.

13 Anyone else here in support? Please come forward.

14 MR. TREECE-SINCLAIR: Senator Roberti, Members of
15 the Committee, good afternoon. My name is Les
16 Treece-Sinclair. I am the President of Disabled in State
17 Service.

18 The Disabled in State Service, or DISS as we call
19 it, was formed in 1976 by a group of concerned state
20 government employees, virtually all of whom had disabilities.
21 The purpose of the organization was to create a mechanism, a
22 forum, if you will, to address disability employment issues
23 within state government; to promote more equitable employment
24 opportunities for persons with disabilities in state
25 government.

26 Now, some 16 years later, the organization has
27 grown to several hundred members around the state. And while
28 our focus still is, to a very large extent, state government,

1 we now also deal with local government and institutions of
2 higher education.

3 We are here today because the Board of DISS
4 unanimously voted and has acted to endorse the confirmation
5 of William Tainter as Director of the Department of Rehab.
6

7 Unlike some of the previous speakers, I have known
8 Bill only a short time, going back to the fall of 1990. But
9 once he became the Director of the Department of Rehab. in
10 the spring of 1991, Bill's relationship with DISS clearly
11 indicated that he was prepared to take the agency into at
12 least one new direction, and that new direction was to
13 become involved with DISS as the only disability advocacy
14 organization promoting employment opportunities for
15 individuals specially within the state government sphere.
16 Bill became actively involved.

17 Let me cite an example to show the level of that
18 commitment. Bill mentioned that the Governor has designated
19 the Department of Rehab. as the lead agency on the
20 implementation of the new Americans with Disabilities Act,
21 federal civil rights legislation.

22 In the summer of last year, 1991, Disabled in
23 State Service, with the assistance of two other disability
24 organizations, began to put together a training seminar which
25 was subsequently held November 6th here in Sacramento; a very
26 successful ADA training seminar which attracted some 450+
27 persons at the Sacramento Community Center.

28 The Department of Rehab., which for many years had

1 not been directly involved with DISS on events, nor had it
2 been really substantially involved in the state government
3 disability employment sphere, became very much involved.
4 Bill personally committed an assistant deputy director to be
5 a part of the planning of the program, distributed materials
6 throughout the state, and detailed a deputy, an assistant
7 deputy, program managers, and other staff to serve as resource
8 individuals, panel members of the program, and he personally
9 welcomed the audience, bringing a written message from the
10 Governor.

11 Small example, but it was a major change from what
12 DISS had experienced in prior years from the Department of
13 Rehab. Clearly, the agency has seen the importance of
14 becoming involved, both in ADA and again its new role, and
15 involved in state government. Other agencies have key roles,
16 such as the Department of Personnel Administration and the
17 State Personnel Board, but when it comes to disability
18 employment, the Department of Rehab. must play a key and lead
19 role. And Bill Tainter began last year to define the
20 agency's role in that new direction.

21 DISS, again as the disability advocacy
22 organization, promoting employment opportunity in that
23 sphere, is very pleased with this new direction.

24 I would also simply note, too, we have heard from
25 representatives of various organizations indicating that
26 there is still much to be done. There are still issues to be
27 resolved. There are things that still need attention. All
28

1 is not perfect. We are not all yet in accord or agreement on
2 decisions and actions.

3 Let me just remind all of us that the disability
4 minority, and I emphasize that word -- the disability
5 minority community -- is no different than any other minority
6 community. We are not absolutely homogeneous with it comes
7 to understanding our needs and concerns and issues. The
8 disability community is made up of many subgroups and
9 populations and sub communities. That is the nature of the
10 beast.

11 I'm very pleased to have noted that even in his
12 short time as Director of the Department, Bill is clearly
13 making an effort to enhance the communication between groups,
14 to achieve a fair and equitable balance between resources and
15 possibilities and the needs of a variety of different
16 constituencies within the disability minority community. And
17 I think it bodes well for the program in the future.

18 Most of the other comments that you heard from
19 other people covered other things that we might say, but
20 again, for the progress that DISS has clearly seen over the
21 last year, and for the progress that we clearly anticipate
22 over the next year, we have, again, endorsed Bill Tainter and
23 urge your confirmation of him as Director of the Department
24 of Rehab.

25 Thank you very much.

26 CHAIRMAN ROBERTI: Thank you very much.

27 Next witness.
28

1 MR. BLACK: Good afternoon, Mr. Chairman and
2 Members of the Committee. My name is Ralph Black. I am the
3 President of the California Association of Persons with
4 Handicaps, which is one of the oldest and largest
5 organizations of people with all types of disabilities in the
6 State of California.
7

8 We have been working for over 20 years to improve
9 opportunities for people with disabilities in areas such as
10 removal of architectural barriers, opening up employment
11 opportunities, and ensuring that people with disabilities
12 have a full opportunity to participate in all aspects of
13 society. In that time, the disability rights movement, of
14 which we are a part, has accomplished a great deal. We've
15 made significant progress in eliminating barriers in the
16 physical environment. We improved access to transportation
17 and education. But the one area that we still have not
18 really solved as a problem for people with disabilities is
19 the area of employment.

20 Even today, in 1992, two-thirds of people with
21 disabilities are unemployed or underemployed, and those of
22 us that are employed typically are paid less and have fewer
23 opportunities for promotion.

24 The agency in state government that is charged with
25 addressing this problem is the Department of Rehabilitation.
26 And many of us in the disability movement have long felt that
27 the Department has not been as effective in addressing these
28 problems as it might have been for a number of reasons.

1 Partly because it strove to place people primarily in entry-
2 level jobs; it took a traditionally rather paternalistic
3 attitude towards dealing with people with disabilities,
4 trying to tell them what was good for them; and it also
5 sought to find people with minimal disabilities and put them
6 in low-cost programs so that they could get -- show high
7 numbers of placements at very little cost.

8 We are pleased to support the Governor's
9 recommendation of Mr. Tainter to serve as the Director of the
10 Department because we believe that his few months in office
11 indicate that he has begun to take the Department in a
12 different direction, to put in place some principles that
13 will bring about the improvements in employment opportunities
14 for people with disabilities that we have so long needed.

15 First of all, he is very committed to preparing
16 people with disabilities for careers, not just for dead-end,
17 entry-level jobs. He believes in consumer control and client
18 participation, that the client should define their goals,
19 with advice and assistance from the Department, but that the
20 Department should facilitate what the client needs.

21 He has indicated a definite willingness to work
22 with the disability organizations and people in the disabled
23 community to try to understand what the needs are and to
24 begin working with the organizations in a way that certainly
25 has not been characteristic of the Department's participation
26 in the last few years.

27 He has indicated to you himself this afternoon his
28

1 interest in serving people with severe disabilities and
2 getting away from that numbers game that I discussed earlier.

3 He is, of course, a part of the independent living
4 movement and shares that philosophy of promoting and
5 maximizing independence for all people with disabilities.

6 And finally, he is one of us. He is a person who
7 has come out of the disability rights movement, and although
8 you have heard quite a bit today about the differing needs of
9 different people with disabilities, Mr. Tainter, as a person
10 with a disability, shares with all of us the common
11 experience of having been denied opportunities, discriminated
12 against, and having been a client, having to try to struggle
13 with the bureaucracy of the Department of Rehabilitation.

14 And while he does not have first-hand experience
15 with every type of disability that is represented in our
16 community, I think that what you have heard today in terms of
17 the discussions that have gone on with various organizations
18 certainly indicates that he has the willingness and ability
19 to listen and to work cooperatively with the various interest
20 groups to try to come to resolution of some of the tough
21 issues that face the Department in the years to come.

22 For these reasons, the Board of Governors of our
23 Association, at its December meeting, adopted a resolution
24 which we have included with a letter that we submitted in
25 advance of the hearings. Let me just conclude by reading the
26 final paragraph of that resolution, which says:

27 "The Board of Governors of the
28

1 California Association of Persons
2 with Handicaps, representing a cross
3 section of persons with disabilities
4 and sensory impairments throughout
5 California, and on behalf of the 1.6
6 million Californians with
7 disabilities, strongly endorses the
8 Governor's appointment of William
9 Tainter to serve as Director of the
10 Department of Rehabilitation."

11 Thank you, and I'll answer any questions.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Any questions? Senator Mello.

14 SENATOR MELLO: I have another commitment that will
15 take me away briefly.

16 I'm just wondering if the roll can be kept open on
17 Mr. Tainter and the other nominations?

18 CHAIRMAN ROBERTI: We will do that, thank you,
19 Senator.

20 We're running a little bit lengthy, so if witnesses
21 come forward to indicate their support, if they anything new
22 to add, we certainly welcome that. If it is a repetition, we
23 understand your wanting to saying something, but maybe in
24 that case just indicate your support and that of your
25 organization.

26 MS. VESCOVO: Senator Roberti, I'll keep it less
27 than a minute.
28

1 My name is Norma Jean Vescovo. I am the President
2 of the California Foundation for Independent Living Centers.
3 My home is 14402 Haines, in Van Nuys, California.
4

5 We have offered our support of the 28 Independent
6 Living Centers for Bill Tainter's consideration of his
7 position, and we would hope you take that into consideration.

8 Thank you.

9 CHAIRMAN ROBERTI: Thank you, Ms. Vescovo.

10 Any other witnesses?

11 MR. SEATON-MSEMAJI: Senator Roberti and Members,
12 my name is Ken Seaton-Msemaji, United Domestic Workers of
13 America, who represent home attendant employees who provide
14 home care for elderly and disabled people throughout the
15 State of California. We represent the home attendants in 14
16 California counties. Our base is in San Diego, where we
17 started.

18 I came to know Mr. Tainter in the late '70s, early
19 '80s, and the only thing that I would add to what's already
20 been said and to what we've written in our letter is that for
21 those who testified earlier explaining some of their
22 differences of opinion, but that they were working and
23 negotiating and trying to resolve, I sit here as a person who
24 differed significantly many times with Mr. Tainter in those
25 early years, and his leadership was the kind that could force
26 us and all of the other groups to the table to really in fact
27 work out our differences, which was very difficult to do
28 many, many times. He always sticks to his word. He is very

1 straight and direct and blunt; you don't have to figure out
2 where he's at.

3 And I would suggest to those who've had some
4 concerns that we are in the best shape we can be in with
5 William Tainter at the head of this very important
6 Department. He is not a status-quo person. He will make
7 that Department better than it's ever been, and he will keep
8 his word and work out and resolve to mutual satisfaction all
9 of the kinds of problems that has been spoken about here
10 today.

11 So, it's with great pride that I get a chance to
12 come and give him the kind of support that he's given to many
13 of our groups during very difficult times, and his
14 problem-solving abilities, and his credibility, and his
15 honesty is what really makes me -- I talked to my Executive
16 Board, who are spread out over this state. They talked to
17 their local boards, and almost unanimously, the ones who had
18 been involved and know about Bill Tainter were happy at
19 allowing me to come here and express this support.

20 Thank you very much.

21 CHAIRMAN ROBERTI: Thank you very much.

22 Is there anyone else in support? Is there anyone
23 else in opposition? Please come forward.

24 MR. BORELLI: Good afternoon. I'm Paul Borelli,
25 and I'm totally bind, and I'm opposed to the Tainter
26 confirmation because I feel that he was antagonistic toward
27 programs for the blind.
28

1 But I would like to see -- I'm for a disabled
2 person as head of the State Department of Rehab., and I hope
3 that we can all work together for the betterment of all
4 disabilities, including the blind.

5 Thank you very much.

6 CHAIRMAN ROBERTI: Thank you very much.

7 Next witness.

8 MR. ROMPEL: Mr. Chairman and Members of the
9 Committee, my name is Frank Rompel, Jr. I'm the Chairperson
10 of the VOICE; it's an acronym for Vendors Organized In
11 Communication and Education. We're a Political Action
12 Committee that represents the vendors in the Business
13 Enterprise Program in California.

14 Let me back up a second. Our members consist of
15 vendors in the Business Enterprise Program in California.

16 We support the resolution drafted by the California
17 Vendor Policy Committee, and it was unanimously accepted by
18 that Committee, that opposes the confirmation of Mr. Tainter
19 as the Director of the Department of Rehabilitation.

20 Among our concerns in VOICE is what appears to be a
21 contradiction to a term that I listened to Mr. Tainter make
22 in a speech last November, when he addressed the National
23 Federation of the Blind in Los Angeles. And the phrase is
24 "consumer friendly." It was his intent in that speech that
25 he would make the Department and its programs "consumer
26 friendly" for those of us that have a need to utilize them.

27 I'm a vendor also in the Business Enterprise
28

1 Program, and my father was also. So, I'm a second generation
2 legally blind person in the state, so I'm also a success
3 story from the Department.
4

5 Some of the concerns that we've seen that seem
6 contrary to the term "consumer friendly" -- and it's been
7 used by deputy directors also, so it is, apparently, a phrase
8 that has been coined that has intentions of being utilized,
9 but we've not seen that yet.

10 One of the areas that we've not seen a consumer
11 friendliness is in the communications from the Department to
12 the vendors in this state. It seems almost absent or near
13 absent.

14 We have in excess of two dozen letters that have
15 been written to Mr. Tainter to ask him to address issues or
16 concerns that we've had with our program. And I will not say
17 he has not addressed anybody's letter, but we have over two
18 dozen people who have not had their letters responded to; one
19 person in particular has written 13 separate letters and not
20 had even a return letter from Mr. Tainter, from a deputy
21 director, or a phone call in place of a letter. That lack of
22 communication is very frustrating.

23 At times, phone calls will be made to various
24 deputy directors, and in a couple of instances, perhaps, it
25 was to complain about a person within the Business Enterprise
26 Program. But the phone call that was made to a deputy
27 director gets returned by the administrator of the Program.
28 So, when you try to deal with the issues as they relate to

1 our program, and we go to the appropriate persons in the
2 ladder, they don't get the attention of those persons; they
3 get kicked back down. And again, that's very frustrating for
4 us, because that is -- there's a path that we need to follow,
5 and that's the path we're told, yet we don't get any
6 information from them.

7 Phone calls that are made to the Department go
8 unreturned at all. They just -- they seem to not even
9 address our issues at times.

10 We've made requests for information that the
11 federal law allows us as it relates to our program. In
12 particular, we've made requests for an application for the
13 designation of the state licensing agency, which BEP has to
14 file with the federal government. This designation includes
15 the mission, the goals, and the objectives that the
16 Department has told the feds they're going to utilize in the
17 administration of our program.

18 The law tells us we have a right to this document,
19 yet we've never been given that document. We'd like to know
20 what they have told the feds their mission is. We don't know
21 where they're taking our program. There's no clear path.
22 There are no policy manuals; there is no budget. There is
23 nothing concrete that we can put our fingers on to say this
24 is where our program is headed.

25 CVPC delegates, who are elected by vendors in the
26 state to deal with policy matters as they relate to vendors,
27 have made requests for addresses of the vendors in our state,
28

1 to get the addresses to be able to deal with them, to get
2 their feelings on various issues and such. The CVPC
3 delegates have been told that they don't have a right to
4 those mailing addresses. They don't need to know the
5 addresses of their fellow vendors and how they're able to
6 communicate with them.

7
8 That cutting off of communication is prevalent in
9 all the various areas I've outlined.

10 Another concern, or what appears to be certainly
11 not "consumer friendly", is access to due process. The
12 Welfare and Institution Code instructed the Department to
13 hold the CVPC election, which was done -- very tardy, but it
14 was completed. I might add that there were 13 grievances
15 filed in that election. A number of them are going to go to
16 federal arbitration. It was not done according to past
17 processes. There was no need to re-invent the wheel. We had
18 an election process in place; it just was not utilized.

19 The vendors have no appeal process, we're told by
20 the Department in their handling of this election. So what
21 we have is the W&I Code saying the state's required to hold
22 the election. The Department of Rehabilitation's legal
23 department says, "We don't have an appeal process as it
24 relates to the CVPC election process."

25 The Welfare and Institutions Code also says we have
26 a grievance process. It would make --It would seem clear
27 that if the W&I Code says that they're responsible for the
28 election, and the W&I Code says the vendors have a right to

1 file a grievance, that we would be able to file a grievance
2 in their handling of the election. Yet their legal
3 department's interpretation is that we do not have any due
4 process at all in that election. That doesn't seem quite
5 right at all.

6 Another area of what doesn't appear to be "consumer
7 friendly" is, Mr. Tainter, when he had taken the exempt
8 position away from the California Vendor Policy Committee, I
9 understand that that has been changed today; that decision
10 was reversed.

11 I would be curious to know, however, how this
12 exempt position is going to be filled. By that, I mean this:
13 The exempt position that was taken for Mr. Tainter's aide, I
14 believe, paid somewhere between \$30,000-40,000 per year. I
15 would be curious to know if this new exempt position is going
16 to have that kind of salary base, which will attract a
17 professional sort of person to be assistant to the California
18 Vendor Policy Committee, or is it going to be a significantly
19 lower wage, which perhaps may attract a clerical person,
20 which will not enable the California Vendor Policy Committee
21 to do as much as they possibly could with the previously
22 salary structures. I would hope that we're able to get an
23 answer to that, as to what that salary structure will be for
24 that exempt position.

25 Another area in regards to consumer unfriendliness
26 is, and this is just one example, if I may. There was a
27 vendor who was receiving a -- at 11000 Wilshire, the Federal
28

1 Office Building on Wilshire Boulevard in L.A. -- was
2 receiving vending machine commissions that were taken away
3 last July. They were taken away by the Department telling
4 the vendor that their interpretation of the federal law says
5 he was no longer entitled to the full commission he was
6 receiving.

7 He communicated back to the Department. They told
8 him that that was okay; that that was their decision and that
9 was final.

10 He retained legal counsel; paid thousands of
11 dollars; drafted letters and communicated with the
12 Department. And then, surprise-surprise, the Department's
13 legal department says, "Oh, you're right. You are entitled
14 to that money." And now they're in the process of
15 negotiating to give it back to him.

16 That's not consumer friendly. This gentleman's
17 income was cut by less than 50 percent. He fell behind in
18 his personal obligations. He was dependent on this money,
19 and there was no need at all to take away this man's income.

20 Another area of concern to vendors in California,
21 Mr. Tainter had an article featured on him in the L.A. Times.
22 It was printed December 30th, and in it, he made this quote.
23 He said his goal in the Department is to, quote,

24 "... orient the Department so it
25 will begin sending clients to
26 college instead of trade schools or
27 into entry-level jobs that evaporate
28

1 after only a few months."

2 End of quote.

3 That goal is contrary to one that would promote the
4 Business Enterprise Program. Our training program is in
5 essence a trade school. We take individuals and train them
6 to run cafeterias and snack bars in the various city, county,
7 state and federal buildings in the state. That's a trade
8 school. And if his intention is not to go towards the trade
9 schools, it's odd.

10 Mr. Tainter's response to the California Vendor
11 Policy Committee resolution, he states in there some facts
12 that I don't know how he's going to be able to accomplish.
13 He says that there's 27 new locations that are going to be
14 opened up in our program. That's 27 locations that will need
15 a new vendor. There's 27 interim locations in the state
16 right now that do not have a vendor; we have people operating
17 multiple units. So, there you have 54 vendors that will be
18 needed to handle those. You have 26 vendors, approximately,
19 that will dissipate within the next 12 months just through
20 the annual 10 percent attrition rate that happens within our
21 program. If you add those up, that's 80 vendors that will be
22 needed. There are five trainees in the last training class
23 that we have in this state.

24 So, while going to college is an admirable goal,
25 and it certainly is an avenue for lots of folks, it's not an
26 avenue for everybody. And it's going to require rehab.
27 counselors understanding that trade schools, in particular
28

1 our trade school, is positive and necessary for blind
2 persons. It's necessary to help them be able to become
3 productive and able to operate within our program.
4

5 Lastly, if I might, and I believe I'm doing this
6 with as much -- with respect for Mr. Tainter, it seems to me
7 personally ironic that Mr. Tainter, which is according to the
8 Sacramento Bee and the Los Angeles Times, just filed a
9 \$250,000 lawsuit against a commercial airline for their
10 failure to follow federal laws, and for their inconsistency
11 in following airline boarding procedures.

12 Yet under Mr. Tainter's administration in this
13 Department, DOR has failed to follow state and federal laws
14 as it relates to the Business Enterprise Program. And his
15 administration has been inconsistent in following procedures
16 to administrate our program, and mostly because there is not
17 a policy manual in place to administrate our program.

18 I might state that we are a \$50 million a year food
19 service concern, with 250 blind persons in city, county,
20 state and federal buildings throughout the state. It's not a
21 mom-and-pop shop; it's a program mandated by the feds. It's
22 a beautiful program. We're in every state in the country,
23 and it needs a policy manual. It needs --

24 CHAIRMAN ROBERTI: Maybe we can interrupt you right
25 there.

26 I'm interested in the point on the policy manual.
27 Why isn't there a policy manual, Mr. Tainter? Could you
28 address that, or is there?

1 MR. TANTER: There is not currently a policy
2 manual.

3 We have a system in place to put together that
4 policy manual in the current year.

5 CHAIRMAN ROBERTI: So you do expect one?

6 MR. TANTER: Yes.

7 There's never been a policy manual, is my
8 understanding. This is one of the focal areas that we're
9 going to work on.

10 CHAIRMAN ROBERTI: Right. So that's not something
11 unique to your administration, and you're trying to alter
12 that.

13 MR. TANTER: Yes, we are.

14 CHAIRMAN ROBERTI: Senator Petris has a question.

15 SENATOR PETRIS: Another question on that, too.

16 Are you saying there's never been a policy manual
17 in --

18 MR. TANTER: Not to my knowledge.

19 SENATOR PETRIS: -- in all the history?

20 MR. TANTER: To my knowledge, there has not been a
21 written, established policy manual. It's always kind of been
22 run off the cuff.

23 SENATOR PETRIS: Have you made demands on prior
24 Directors for a manual?

25 MR. ROMPEL: Not to the extent that we have here,
26 the revamping of Senator Mello's -- Senator Mello sponsored
27 SB 2759, which rewrote the W&I Code. They were a wonderful
28

1 change to the program.

2 The problem is that what's on paper is beautiful.
3 It has not been adhered to; it has not been followed. The
4 W&I Codes are not followed in the key areas that it was
5 designed to do.

6 It was designed to strengthen the accountability of
7 the Department to the vendors as they administrate our trust
8 fund and help our program grow.

9 SENATOR PETRIS: While we're on past policy, what
10 about the counsel's opinion that you're not entitled to due
11 process? Is that an old, standing --

12 MR. ROMPEL: No, this -- this is what occurs when
13 you don't have a policy manual.

14 What they've done here is say that we do not have
15 due process in this one particular area. They say that we
16 have process in every other aspect, but since they aren't
17 responsible for the election -- and if I'm wrong in my
18 paraphrasing, forgive me -- since they're not responsible for
19 the total administration of the election, we cannot file a
20 grievance as it regards to that.

21 SENATOR PETRIS: Now, is that statement a new
22 policy, or is that a traditional one?

23 MR. ROMPEL: That has never occurred before.

24 SENATOR PETRIS: There's always been some grievance
25 procedure recognized in the past?

26 MR. ROMPEL: Absolutely, with any decision there's
27 a grievance procedure.
28

1 SENATOR PETRIS: That would be a major departure
2 from past policy.

3 MR. ROMPEL: Absolutely, without question,
4 absolutely.

5 If I may continue on this one subject here, we're
6 happy that Mr. Tainter has the right to file this lawsuit, as
7 any person, whether it be disabled or not, should be able to
8 do when they're harmed and such.

9 What we're asking for, is it too much for blind
10 vendors to have -- to be able to file a grievance and also
11 have due process? Why should we not have that same right?

12 We're not looking to file lawsuits. We're looking
13 to file grievances and deal with the problems
14 administratively within the Department.

15 CHAIRMAN ROBERTI: Thank you very much.

16 Any questions? Hearing no questions, we appreciate
17 your testimony.

18 MR. ROMPEL: If I may make a last statement, I
19 don't know the correct jargon, but it's an extremely
20 important issue to the vendors in our program. And it would
21 seem appropriate -- I don't know the correct term -- but, you
22 know, the last 24 hours, the response to their resolution was
23 determined and dissipated [sic] throughout the people in the
24 state, and not everybody's had a chance to see it.

25 If you had the right, if you were able to allow
26 them to hold their CVPC meeting this weekend, go over it,
27 VOICES will contact our members and such and go over the
28

1 information. Were you able to hold it over to give the
2 vendors a chance to get back to you with their position.

3 CHAIRMAN ROBERTI: What we're probably planning to
4 do, Mr. Rompel, is to take a vote today; however, we will
5 hold it on the Floor, which is the critical vote is on the
6 Floor, for three weeks because we respect the concerns of the
7 blind organizations, in particular the Blind Vendors do have
8 a right to get their point of view across to us and, maybe,
9 to work out any problems there may be --

10 MR. ROMPEL: We'd love to work --

11 CHAIRMAN ROBERTI: -- with Mr. Tainter.

12 MR. ROMPEL: We'd love to work with Mr. Tainter.

13 CHAIRMAN ROBERTI: We're going to hold it for three
14 weeks on the Floor, but this has been a major hearing, and it
15 won't be fair, I don't think, to the proponents or the
16 opponents to not take a vote now if we can at all avoid it.
17 I won't say we never postpone; we do.

18 I think in this case, my sense is and I think the
19 Committee's sense is that some of these problems can be
20 worked out if we just don't rush the confirmation on the
21 Floor.

22 MR. ROMPEL: Okay. Thank you very much.

23 CHAIRMAN ROBERTI: Thank you.

24 Please come forward.

25 MS. BALDWIN: Thank you. My name is Anita Baldwin.
26 I'm the Executive Director of the San Francisco Lighthouse
27 for the Blind.
28

1 I planned to be a listener today. I feel, though,
2 that I'd like to make a comment.

3 My comment is that my agency, and many other
4 private agencies for the blind, and many of us who are
5 consumers of services, are in strong support of Bill Tainter,
6 and we wanted to make sure that you knew that.

7 To remain silent seemed like, perhaps, it would be
8 a lot of people representing one small segment that oppose at
9 this point, as opposed to many of us who represent broader
10 cross sections that are saying yes.

11 I've known Bill for twelve years. We've worked
12 through a lot of things together, personally and
13 professionally. We've learned about how to get employment in
14 a market that didn't employ people with disabilities. We've
15 learned about how to deal with the Department of
16 Rehabilitation from the consumer side of the fence, and I
17 strongly believe that Bill can deal with it from the
18 administrative side of the fence.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you very much.

21 I don't think there are any other witnesses, so,
22 Mr. Tainter, you may conclude.

23 Senator Petris, however, has a few questions.

24 SENATOR PETRIS: Yes, very brief.

25 I've been asked to pose some questions by one of
26 our committee chairs that has to do with the Federal
27 Rehabilitation Act of 1973, which is being re-authorized by
28

1 Congress. I'm sure you're familiar with that. That's to
2 promote more independent, productive lives for people with
3 disabilities.

4 And in response to this reauthorization, the Senate
5 passed a resolution authored by Senator Watson in which the
6 Legislature commissioned a study to parallel the
7 Congressional reauthorization.

8 So based on that, I have some questions I'd like
9 you to answer for me.

10 Does the Department of Rehab. have a role in
11 assisting the construction of the federal legislation?

12 MR. TAINTER: The Department has put together a
13 task force, headed by Curtis Richards, who's an exempt
14 appointee of mine. And we will be holding up to six hearings
15 throughout the state involving the three Congressmen involved
16 in the reauthorization: Congressmen Miller, and Cunningham,
17 and Martinez.

18 Of course, we also plan to have, in their districts
19 -- because also we're going to have additional hearing with
20 Senator Seymour to get input from the community.

21 We basically have time lines to work on the
22 particular reauthorization, and we will be providing a
23 basically an issue paper from the Department of
24 Rehabilitation with regard to the reauthorization.

25 We consider the reauthorization to be a real
26 pivotal kind of an issue.

27 SENATOR PETRIS: How far along are you?
28

1 MR. TANTER: Well, we got started on this about
2 three months ago.

3 SENATOR PETRIS: Was this in response to SJR 25?

4 MR. TANTER: Well, it was something that I was
5 going to do anyhow.

6 SENATOR PETRIS: You were going to do it anyway?

7 MR. TANTER: Yes. But I've also been in touch
8 with a lot of people throughout the state -- Ed Roberts, and
9 so on -- to see what their feelings, and others.

10 SENATOR PETRIS: And you're going to be developing
11 this parallel?

12 MR. TANTER: It'll be a parallel SJR 25, which
13 essentially was one of our highest priorities when we got
14 here. This is our chance --

15 SENATOR PETRIS: How many others are on this staff?

16 MR. TANTER: Oh, three or four, I think it is, of
17 our folks.

18 But our primary role is to get the input from our
19 constituency regarding what they see is important in the
20 reauthorization. That's why we've involved the three
21 Congressmen on the Labor and Education Committee, who'll be
22 reviewing the reauthorization.

23 SENATOR PETRIS: Do you believe these efforts on
24 your part to respond will benefit the consumer?

25 MR. TANTER: Oh, very much so, in that, as I
26 stated earlier, we want to get more consumers and
27 organizations representing their interests involved in the
28

1 reauthorization. This is our chance now to see the federal
2 law become -- basically what I would like to see is more
3 consumer oriented; have rehab. plans driven by people with
4 disabilities. Give people the maximum opportunity for
5 working competitively and living independently, and,
6 hopefully, the greatest amount of control by disabled people
7 themselves.

8
9 SENATOR PETRIS: So this would involve some changes
10 in the state's program to provide the tracking?

11 MR. TAINTER: We're primarily geared by the --
12 driven by the federal law, so we get the federal law more
13 responsive, then we can come to you folks at the state level.

14 SENATOR PETRIS: One other question on a different
15 subject, but I'd like to hear your responses to the last
16 witness.

17 I've been told that there may be a problem at the
18 Independent Living Center's computer program. It might be in
19 jeopardy. Do you have any information on that?

20 MR. TAINTER: No, there's no such -- there have
21 been no discussions along that line, and I wouldn't see that
22 be an issue. It certainly isn't anything that's in the
23 Governor's budget, particularly the training programming.
24 There's one in L.A. and there's one in your district, but
25 they've been -- we've supported those.

26 SENATOR PETRIS: It's my district that called me,
27 people in that district who called, and nobody from L.A.

28 MR. TAINTER: In some of those budget drills, we

1 might have talked about some problems.

2 SENATOR PETRIS: You think they're going to be
3 okay?

4 MR. TAINTER: Yes, if you folks, you know, agree to
5 our budget, hopefully.

6 SENATOR PETRIS: Thank you.

7 CHAIRMAN ROBERTI: You're a good lobbyist.

8 You may conclude, Mr. Tainter.

9 MR. TAINTER: Well, I think many of my
10 professional friends have been here to basically talk about
11 my background and basically my philosophy. I think you
12 understand my philosophy pretty well.

13 I haven't had the fortune to talk to you, Senator.

14 And I really think that the thing to do is to
15 approve the Governor's recommendation to confirm me for this
16 position, for this appointment.

17 SENATOR PETRIS: May I ask, Mr. Chairman.

18 CHAIRMAN ROBERTI: Yes, Senator Petris.

19 SENATOR PETRIS: There were specific comments made
20 by the last witness. For example, the "user friendly" theme,
21 which sounds very good. But he mentioned some examples of
22 things that he thought were just the opposite.

23 Do you want to answer any of those?

24 MR. TAINTER: Well, some of those specific issues,
25 think, we addressed in our response to the CVPC opposition.

26 With regard to the appeal process and so on, it was
27 our legal opinion that the Appeals Board, basically, is
28

1 concerned with consumer client issues; that you have to be a
2 client of the Department and so on.

3 But my understanding, there's always been a
4 grievance procedure of some kind, and if there isn't, we'll
5 make sure there is one.

6 SENATOR PETRIS: Well, the witness contends that
7 for the vendors, there isn't any where there used to be.

8 MR. TAINTER: I haven't made any decision -- to my
9 knowledge, I haven't done anything that would lessen their
10 right to a grievance procedure.

11 SENATOR PETRIS: Apparently counsel has.

12 MR. TAINTER: Well, that's --

13 SENATOR PETRIS: They've been communicating with
14 your counsel, and he says no; there's no provision for any
15 grievance.

16 MR. TAINTER: There's two issues. One is grievance
17 procedures, which we haven't done anything to lessen them.

18 And secondly is the issue, they wanted to know
19 could they appeal any of their grievances to the so-called
20 Appeals Board. The Appeals Board is made up of, I believe,
21 seven appointments by the Governor, and their role is to
22 review clients who appeal to the Department that they're
23 unsatisfied with the services they've received. It's
24 basically an organization or a board that provides a
25 recommendation to me on how we should provide the services.

26 They're not individual clients, so hence legally
27 they're not entitled to go to the Appeals Board.
28

1 Now, with regard to grievances, whatever grievances
2 where always in place have not been pulled back at all. I
3 mean, I did nothing of any positive nature to do that. I
4 mean I think --

5 SENATOR PETRIS: There seems to be a major
6 difference there as to what the Welfare and Institutions Code
7 provides. He seemed to be very emphatic that under Senator
8 Mello's legislation, vendors are supposed to be included.
9 Maybe we need to review that.

10 Do you think it's a good policy, regardless --

11 MR. TANTER: I think they should have --

12 SENATOR PETRIS: -- of the fact, shouldn't they
13 have a right of appeal?

14 MR. TANTER: Without a doubt. Everyone should.

15 SENATOR PETRIS: Okay. Well, we'll have to look
16 into that and provide for it.

17 MR. TANTER: I share their concerns. The
18 Department has not been as responsive as it should be to the
19 vendors, but we're certainly going to actively work to
20 resolve that.

21 SENATOR PETRIS: Be more user friendly for them,
22 too.

23 MR. TANTER: Well, I thought "user friendly" was a
24 very compatible term, because we haven't been user friendly
25 in the past, and we need to be.

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN ROBERTI: Thank you, Senator.
28

1 Do I hear a motion?

2 SENATOR CRAVEN: So move.

3 CHAIRMAN ROBERTI: Senator Craven moves
4 confirmation be recommended to the Floor.

5 The Secretary will call the roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Beverly Aye.

9 Senator Mello. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye.

12 Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Craven Aye.

15 Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 SECRETARY WEBB: Roberti Aye.

18 CHAIRMAN ROBERTI: There are sufficient votes.
19 Senator Mello wants the roll held open so he can cast an Aye
20 vote. So, Senator Craven, I will take it as part of your
21 motion, as your motion, to hold the roll open until Senator
22 Mello has a chance to cast a vote.

23 Without objection, that will be the order.

24 We will hold the confirmation on the Floor for
25 there weeks to give Mr. Tainter a chance to talk to some of
26 the organizations representing the blind, especially the
27 Blind Vendors, and then we'll take the confirmation up on the
28

1 Floor.

2 Congratulations, Mr. Tainter.

3 MR. TAITER: Thank you.

4 [Thereupon the Rules Committee
5 acted upon legislative items.]

6 CHAIRMAN ROBERTI: Mr. Boren, I believe, is from
7 out of the city, so you luck out a little bit and you get to
8 come up next.

9 Senator Craven, I'm going to turn the Chair over to
10 you. I have another meeting in the room next to us.

11 SENATOR CRAVEN: Very well.

12 Mr. Boren, if you will wait just a moment.

13 [Thereupon the Rules Committee
14 acted upon further legislative
15 items.]

16 SENATOR CRAVEN: Now, Mr. Boren, please. This is
17 Mr. Frank D. Boren, Member of the Fish and Game Commission.
18 He is an appointee of the Governor, and we will ask him, as
19 we do all the appointees, nominees, to tell us why you feel
20 you are qualified for this position?

21 MR. BOREN: From the conservation standpoint, I
22 started in that movement in 1969 as one of the original
23 founders of the Southern California Chapter of the Nature
24 Conservancy. I went on to be the Chairman. I then was
25 involved with the Nature Conservancy in merging the Northern
26 California Chapter and the Southern Chapter and became
27 Chairman of that.
28

1 I went to the National Board of Governors of the
2 Nature Conservancy, worked hard there and became a Chairman.
3 I left commercial life in 1986 to become the Western Regional
4 Director of the Nature Conservancy paid staff. I was asked
5 to become the President, went back to Washington, D.C., and
6 was involved as President of the Conservancy from '86 until
7 1990.

8 I now devote my time to causing change in the
9 environment and trying to make sure the private sector is
10 involved in that change, because my philosophy is, if the
11 economy is not involved with the environmental movement, the
12 environmental movement won't make it.

13 So, that's why I feel qualified to be on the Fish
14 and Game Commission, where a lot of these interests are now
15 in competition and must find a way towards a better harmony.

16 SENATOR CRAVEN: Thank you, Mr. Boren.

17 Senator Petris.

18 SENATOR PETRIS: What do you see as the major
19 problem that you have to tackle approaching that office?

20 MR. BOREN: I think the major challenge is to --
21 well, one is to make sure we follow the law that the
22 legislative body in California has adapted [sic].

23 And secondly, to work on means to come to harmony
24 so that the economy and the environment are not in a
25 combative role but in a compatible role. And I think, based
26 on good science, and people working together in harmony, in
27 stead of all the negative energy spent now, layer fighting
28

1 layer, we've got to come to a conclusion or it's going to,
2 one, hurt the economy, or two, it's going to hurt the
3 environment. I think it's a critical time.

4 SENATOR PETRIS: Are you getting pretty good
5 cooperation from all around?

6 MR. BOREN: Well, I'm just on the Commission and
7 vote, and I think we're in a changing time.

8 SENATOR PETRIS: What does that mean?

9 MR. BOREN: I'm still learning.

10 SENATOR PETRIS: Well, I keep seeing these reports
11 come out of L.A., the Chamber of Commerce, saying that
12 there's a massive exodus out of California because of
13 environmental regulations.

14 I think it's a myth. It's been exploded by a study
15 made elsewhere, and I wondering if they keep throwing that up
16 at you in your meetings when you're trying to pursue the very
17 noble policy that you described at the outset.

18 MR. BOREN: Well, the toughest statute on the books
19 is the California Endangered Species Act. And that is a very
20 blunt instrument, and that has caused concern.

21 And what the Governor is trying to do with the NCCP
22 plan, and what a lot of writers feel should be done, is more
23 harmony. But that isn't what that Act now says.

24 SENATOR PETRIS: Does it need changing?

25 MR. BOREN: I think it needs a re-look, yes, but
26 that's a legislative job.

27 SENATOR PETRIS: Yes, but we look to you for
28

1 guidance. Are you willing to give us some guidance on that?
2 If you're asked --

3 MR. BOREN: Yes, I think that --

4 SENATOR PETRIS: -- how can we improve that
5 statute?

6 MR. BOREN: I think that could be a very proactive
7 role that the Commission could play, bringing the best minds
8 from the environmental community, particularly the
9 scientists, and some of the proactive business minds. And I
10 think progress could be made. I think it could be
11 substantial.

12 SENATOR PETRIS: Well, I was going to say, I'm
13 delighted to see the Governor select someone like you, who's
14 been out there in the commercial side of things and has such
15 a strong record in the Conservancy.

16 I remember a lot of fights here on the ozone. We
17 had bills to eliminate certain kinds of sprays, and industry
18 comes in here and laughs at us. And they fought against it
19 and defeated the bill time after time. Now we're discovering
20 we're in very bad shape. It's right over the United States
21 and Canada.

22 MR. BOREN: That's right.

23 SENATOR PETRIS: There are other examples, too.
24 That's the most dramatic right now. They don't seem to pay
25 any attention to the scientists. They just have a total
26 disregard for them and place their own mission ahead of
27 everything else, and to the exclusion of everything else.
28

1 So, I applaud your efforts to try to educate them.
2 I think that's extremely important. I wish you well.

3 MR. BOREN: Thank you.

4 SENATOR CRAVEN: You might also recognize the fact
5 that he's a Stanford man.

6 SENATOR PETRIS: Well, that kind of warmed me up to
7 him in the beginning.

8 [Laughter.]

9 SENATOR CRAVEN: I thought that might have been an
10 influencing factor.

11 Senator Beverly, do you have any questions?

12 SENATOR BEVERLY: Are you ready for a motion?

13 SENATOR CRAVEN: Is there anyone in the audience
14 who wishes to speak on this issue?

15 MR. PALMER: Mr. Chairman, Members of the
16 Committee, I'll be very brief.

17 I'm Mark Palmer with the Mountain Lion Foundation.
18 We are in support of Mr. Boren.

19 I'm also representing the Planning and Conservation
20 League, and I think you have a letter from the Defenders of
21 Wildlife as well in the file.

22 It's a delight to come to this Committee and
23 support a Commissioner after a number of years, as Mr. Petris
24 noted, that we have had some fights.

25 Mr. Boren's voice is still a minority,
26 unfortunately, on that Commission, and we are hopeful that
27 that can change.
28

1 In any event, Mr. Boren, I think, has shown you he
2 has a thoughtful approach to Fish and Game. We don't always
3 agree with him, but he has been proactive in terms of trying
4 to work on the Endangered Species Act to move it forward to
5 where we can resolve some of these difficulties.

6 We think he's a very good addition to the Fish and
7 Game Commission, and we very strongly support him, and we
8 hope that you will both send him with a recommendation to
9 approve him on the Floor, as well as send a message to the
10 Governor you want more appointees like this to the Fish and
11 Game Commission, like Mr. Boren.

12 Thanks very much.

13 SENATOR CRAVEN: Thank you, sir.

14 SENATOR BEVERLY: I'm pleased we got that on the
15 record.

16 I'm prepared to move the approval of the
17 nomination.

18 SENATOR CRAVEN: Anyone in objection? There is
19 none.

20 We have a motion on Frank D. Boren. Call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye.

24 Senator Mello. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven.
28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Craven Aye.

3 Senator Roberti.

4 SECRETARY WEBB: Vote is three to zero.

5 SENATOR CRAVEN: Three to zero and to the Floor.

6 Thank you very much, Mr. Boren. Congratulations,
7 sir.

8 MS. MICHEL: Senator Mello asked that we leave the
9 roll open.

10 SENATOR CRAVEN: Very well, we'll leave the role
11 open.

12 SENATOR PETRIS: So move.

13 SENATOR CRAVEN: We'll leave the roll open. You'll
14 pick up another vote or two there.

15 Next is Bonnie Guiton, Secretary of the State and
16 Consumer Services Agency.

17 Good afternoon.

18 MS. GUITON: Good afternoon.

19 SENATOR CRAVEN: It's getting toward evening now,
20 actually. If you lived in the south, it would be evening.

21 We'll ask you to tell us why you feel you are
22 qualified for this position, Ms. Guiton.

23 MS. GUITON: Thank you, Senator Craven, Members of
24 the Committee.

25 I believe that my background in government service,
26 business, education and other areas of the nonprofit sector
27 has prepared me to meet the challenge of managing a diverse
28

1 state agency.

2 The experience that I bring to state government is
3 enhanced by an extremely competent team of directors and
4 dedicated employees, and they're committed to helping me
5 address the pressing demands placed on our Agency.

6 My previous experience includes serving two U.S.
7 Presidents in three separate appointments. Most recently for
8 President Bush, I served as Special Advisor for Consumer
9 Affairs and Director of the United States Office of Consumer
10 Affairs. And during that time, I worked to develop
11 broad-based coalitions to address consumer privacy and the
12 accuracy of computerized personal information. I also
13 convened the first national symposium on minority consumer
14 issues.

15 Furthermore, as a long-time resident of California,
16 I have a deep-rooted appreciation of community and cultural
17 diversity which I believe I've demonstrated serving on the
18 boards of numerous nonprofit organizations, and they're as
19 diverse in nature as the National Museum in the Arts, the
20 Northern California Committee of the NAACP Legal Defense
21 Fund, and the National Conference of Christians and Jews.

22 I believe that an appreciate for diversity is
23 particularly important for the Secretary of the State
24 Consumer Services Agency, because it touches the lives of all
25 Californians.

26 But my personal philosophy is not to expand the
27 state's bureaucracy, rather to make it more efficient and
28

1 effective, and to enforce legislation already in place, and
2 to encourage a shared ethic between business and government
3 in avoiding excessive regulation which ultimately adds to the
4 taxpayers' burden.

5 I believe that it was Abraham Lincoln who said
6 that:

7 "The legitimate object of government
8 is to do for a community of people
9 whatever they need to have done but
10 cannot do at all or cannot do so
11 well for themselves in their
12 separate and individual capacities."

13 And then he further stated:

14 "In all that the people can do
15 individually as well for themselves,
16 then government ought not to
17 interfere."

18 So I'm grateful to Governor Wilson for the
19 confidence he's placed in me during the past ten months, and
20 I look forward to the opportunity to work with you to do for
21 those who cannot do for themselves.

22 Thank you.

23 SENATOR CRAVEN: Fine, thank you, Ms. Guiton.

24 Senator Petris.

25 SENATOR PETRIS: I'd like to have the privilege of
26 making the motion, since she's from my district.

27 But before that, I have a question or two.
28

1 SENATOR CRAVEN: Very well.

2 SENATOR PETRIS: Does Lincoln's quotation encompass
3 environmental protection?

4 MS. GUITON: Absolutely.

5 SENATOR PETRIS: What is the Earth Conservation
6 Corps?

7 MS. GUITON: The Earth Conservation Corps is a
8 relative new organization that was established to get young
9 people involved in conservation work and to do it on a
10 volunteer basis, so it was -- the concept was that it be all
11 private funding and no government funding, and that it would
12 be working in cooperation with industry and with young people
13 to do, you know, needed conservation work.

14 Very similar to our Conservation Corps.

15 SENATOR PETRIS: Is it a national thing?

16 MS. GUITON: Well, it was to be a national
17 organization. It sort of went on hold when I got pulled to
18 California.

19 But it is still an organization that's waiting to
20 take off, and there's still fundraising efforts going on on
21 behalf of it.

22 SENATOR PETRIS: Were you able to make any impact
23 on the President? I know you served two Presidents.

24 MS. GUITON: Right.

25 SENATOR PETRIS: On President Bush and Consumer
26 Affairs?

27 MS. GUITON: I believe so. There were a couple of
28

1 areas we identified where consumers were not being well
2 served. One was, we really took on the issue of privacy,
3 which we consider to be one of the most significant consumer
4 issues of this decade and, certainly, well into the next
5 century.

6 And the -- and so I testified on behalf of
7 consumers for a couple of issues related there, which include
8 caller identification, also the Fair Credit Reporting Act.

9 It's my belief that somehow or another, consumers
10 really do not understand how information on them is used, or
11 how to protect themselves from having information used by
12 unscrupulous individuals.

13 The other is that minority consumers really do not
14 understand consumer laws, and they don't understand what
15 rights that have accorded to them. And so I convened a
16 symposium at the White House on minority consumer issues.

17 It's kind of interesting, because I was asked if
18 minority consumers were different than other consumer issues,
19 and the fact of the matter is that they are not, but poor
20 consumers tend to pay more because they don't understand the
21 rights that are accorded to them, and oftentimes, then, don't
22 get the protections. So I tried to infiltrate many of the
23 nonprofit organizations, community-based organizations, and
24 all ethnic groups to be able to get information to those
25 places where those individuals will go so that they
26 understand what their rights are.

27 SENATOR PETRIS: Are you doing the same thing in
28

1 the state?

2 MS. GUITON: Yes, we're making the same efforts
3 here. I think it's even more critical in a state like
4 California, with the kind of diversity that we have, and so I
5 believe it's very critical here.

6 SENATOR PETRIS: Are you putting out helpful
7 information in the form of brochures that are --

8 MS. GUITON: We're doing some of that, Senator
9 Petris, but I believe that we have to have more first-hand
10 contact with consumers, you know, because of the various
11 languages that are spoken. If you look at Southern
12 California alone, and we are often citing some 90 different
13 languages.

14 So, our approach is to try to also use community-
15 based organizations and work through consumer organizations
16 to get to people that we are not usually able to get through
17 to. And also to increase enforcement so that they're being
18 protected.

19 SENATOR PETRIS: How about the foreign language
20 media, some newspaper and radio?

21 MS. GUITON: Yes, we're making attempts to get to
22 those as well.

23 Budget constraints are giving us some difficulty,
24 obviously, but it is certainly -- there has been information
25 put out in various languages. We're told by some of those
26 communities that one form of language may not reach all of
27 their community because there's so many different ones. So,
28

1 we're making every effort to try to reach those -- all those
2 various categories of individuals who may not understand
3 English or be able to read English.

4 SENATOR PETRIS: You've had a distinguished career
5 in business before you went into government.

6 Are you encountering any conflicts with your former
7 business pals in being on the other side of the table now?

8 MS. GUITON: Absolutely not. What we try to do,
9 and one of the first things I did when I was in Washington,
10 was to form some coalitions with industry and with consumer
11 organizations so that we bring people together who normally
12 don't sit down and talk to one another, and to get them to
13 understand that there's a need to work together, because it's
14 in the best interests of business to have well-informed and
15 happy consumers. And for consumers, you know, they want
16 quality goods and services.

17 So, it's, you know, it's a win-win situation if we
18 can get them to work together. And I find a willingness on
19 the part of many of them to do that.

20 SENATOR PETRIS: Thank you.

21 SENATOR CRAVEN: Thank you.

22 Senator Beverly, do you have any questions?

23 SENATOR BEVERLY: No questions.

24 SENATOR CRAVEN: Let me ask, does anyone in the
25 audience wish to testify or comment? There appears to be
26 none.

27 Senator Petris.
28

1 SENATOR PETRIS: I asked to make the motion, not
2 only because she's from my district, but I've known her and
3 admired her, and respected her for many years, and I'm happy
4 to put the motion in favor of confirmation.

5 SENATOR CRAVEN: Senator Petris has moved.

6 Call the roll, please.

7 SECRETARY WEBB: Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Beverly Aye.

10 Senator Mello. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye.

13 Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Craven Aye.

16 Senator Roberti.

17 SENATOR CRAVEN: We'll leave the roll open.

18 Congratulations, Doctor.

19 MS. GUITON: Thank you.

20 SENATOR CRAVEN: Did the Chairman say that
21 Mr. Aubry was not with us? Oh, he is here, very well.

22 Come up, please. We didn't want you to think we
23 were overlooking you, but I heard him say something, and
24 quite frankly, I wasn't paying that close attention.

25 This is Lloyd Aubry, who's Director of the
26 Department of Industrial Relations.

27 We'll ask you, Mr. Aubry, why you feel you're
28

1 qualified for this important post?

2 MR. AUBRY: Well, I feel that I'm qualified for the
3 position based both on my background and my past and current
4 service in the Department over the last six or seven years.

5 I have been practicing labor law, I've been in
6 labor relations, ever since I got out of law school in 1985.
7 I also served in the U.S. Department of Labor for three years
8 in the early 1980s.

9 In 1985, I was appointed by Governor Deukmejian as
10 State Labor Commissioner, and during my four years in that
11 position, I think I did a number of things that demonstrated
12 my commitment to the Department, to the Division, and to the
13 constituencies that are served by it.

14 I added a number of positions to enforcement. I
15 rewrote the Operations and Procedures Manual. I issued a
16 number of publications to inform the public about some of our
17 programs. I implemented the discrimination procedure that is
18 currently being used to handle discrimination based on sexual
19 orientation by the Labor Commissioner, and I also instituted
20 a settlement conference procedure that speeded up the manner
21 in which claims are handled before the Labor Commissioner.

22 I was appointed Director about ten months ago. And
23 I think that my service since then, both in respect to
24 various programs within the Department, as well as the
25 appointments that have been made to the various divisions,
26 demonstrate my fitness for the position.

27 When I was first appointed, the Division of
28

1 Apprenticeship Standards had zero funds from the General Fund
2 and was to be supported solely by fees generated from the
3 apprenticeship community. I became convinced that this was
4 not workable and convinced the Governor to agree with the
5 Legislature and fund the Apprenticeship Standards Program out
6 of the General Fund with \$2.5 million.

7 Later I convinced the Governor to sign AB 64, which
8 appropriated \$1.3 million for the support of apprenticeship
9 programs.

10 In the Division of Occupational Safety and Health,
11 you'll recall that that -- our program was rated number one
12 in the country by a private organization. I appointed or had
13 the Governor -- asked the Governor to appoint Dr. John Howard
14 as head of Cal-OSHA. He's both a doctor and a lawyer, and I
15 think has been very well received in the safety community.

16 We've also, since I was appointed, gained
17 legislation to increase Cal-OSHA penalties by 700 percent.
18 And this spring, we will be implementing a high hazard
19 prevention program, which is to target high hazard industries
20 in an attempt to improve their safety records.

21 The Division of Workers Compensation, as you know,
22 the Governor appointed Casey Young as head of that
23 organization. Just before Christmas, Mr. Young and I
24 appeared before the Governor and convinced him that the
25 across-the-board cuts that were going to be allocated to the
26 Division of Workers Compensation should not be implemented
27 because of the effect they would have on implementation of
28

1 the 1989 Reform Act.

2 We have over the past few years increased staffing
3 in the Division of Workers Compensation, such that in all but
4 about one or two offices in the state, it is possible to get
5 a hearing in a timely fashion before one of the Workers
6 Compensation Judges.

7 When I was first appointed, I also began working
8 with the Industrial Medical Council to attempt to staff that
9 organization up and get it running. And I think that I've
10 developed a good relationship with them.

11 Finally, I also became involved in the lawsuit that
12 had been filed by the California Applicants Attorneys
13 Association, and we've been able to settle that lawsuit
14 involving venue and screening of applications.

15 Finally, with regard to the Division of Labor
16 Standards and Enforcement, my old agency, that is the
17 organization, frankly, about which I have the most concern.
18 We did -- the Governor did appoint Vickie Bradshaw as the new
19 Labor Commissioner, who, I understand, is the first woman
20 ever appointed to that job.

21 Because of the fact that the Labor Commissioner's
22 office is funded totally from the General Fund, it has taken
23 the largest hit in terms of budget cuts and has lost a great
24 deal of positions. We tried to implement a number of things
25 which we hope will increase our effectiveness in enforcement.

26 We've attained twelve positions from the Employment
27 Development Department, which are federally funded, to
28

1 increase our enforcement effectiveness. We're looking at
2 funding some of the Workers Comp. enforcement activities of
3 the Labor Commission out of the Revolving Fund under Labor
4 Code 62.5, which is supported by employer contributions.

5 I've also instituted a program where, when Cal-OSHA
6 inspectors and/or Labor Commissioner inspectors are out in
7 the field, they will be looking for each other's violations,
8 so that we will increase our impact in the community. We're
9 looking at whether or not we can implement some fee-
10 generating activities to support some of our programs in the
11 Labor Commissioner.

12 We recently finalized regulations for labor
13 compliance programs to allow local awarding bodies to develop
14 programs that they can enforce, public works activities,
15 which right now are enforced almost solely by the Labor
16 Commissioner's Office. When a local awarding body implements
17 such a program, that awarding body will be able to keep any
18 penalties that are assessed.

19 I also supported and asked the Governor to sign two
20 bills at the end of last session: SB 955, which allows
21 attorney's fees for minimum wages, and also liquidated damage
22 lawsuits by private parties; and finally, AB 318, which
23 requires growers to check the farm labor contractor's
24 licensure status of any farm labor contractors that are hired
25 by them.

26 Finally, we've also instituted over the past few
27 months a number of sweeps in both agriculture and in the
28

1 garment industry to increase our effectiveness. In fact, we
2 have a sweep in the garment industry going on right now
3 around the state, and we have DOSH field people on that
4 inspection as well as some investigators from -- fraud
5 investigators from the State Compensation Insurance Fund.
6 They've had a great deal of problems with garment industry
7 employers who are not reporting their payroll. So, some of
8 those inspectors are going along with our Labor Commissioner
9 inspections.

10 I think the actions that I've described, the
11 appointments that the Governor has made which I have
12 supported, demonstrate my commitment to the Department, and I
13 request your confirmation.

14 Thank you.

15 SENATOR CRAVEN: Thank you very much.

16 Senator Petris, do you have any questions?

17 SENATOR PETRIS: Well, I had --

18 MR. AUBRY: I did go to Stanford, Senator.

19 [Laughter.]

20 MR. AUBRY: I didn't know if you knew that.

21 SENATOR PETRIS: Okay. It helps.

22 I had a barrage of tough questions, but when you
23 indicated you urged the Governor to sign those two bills, I
24 think they were both mine, I'm disarmed here.

25 MR. AUBRY: I've urged him to sign your bills in
26 the past, too.

27 SENATOR PETRIS: Thank you. That's even more
28

1 important than the school.

2 Can you clarify or expand a little bit on your
3 statement regarding the Workers Comp. applicants now get a
4 timely hearing before a judge. What does that mean?

5 We've had so much difficulty in that area due to
6 shortage of all kinds of personnel. We've had these horror
7 stories, where you go into a regional office and --

8 MR. AUBRY: Three hundred feet of mail.

9 SENATOR PETRIS: -- there's 300 feet of mail,
10 unopened. And all of a sudden, we're being told that they're
11 getting a hearing in a timely manner. What is that, five
12 years?

13 MR. AUBRY: Oh, no, no.

14 The requirements are that when you file an
15 applications for adjudication, that you see a settlement
16 referee within 30 days, and that time limit is being met.
17 And then, if you cannot -- if the settlement referee or
18 conference referee cannot resolve the case, then you go
19 before a judge, and that happens within --

20 SENATOR PETRIS: How does that compare to our past
21 history. Is that a lot less time?

22 MR. AUBRY: Yes. There was no question that all
23 over the state, hearings were not being held in a timely
24 fashion, and it was because of the staffing problem. In
25 fact, in my travels around the state, many judges have
26 suggested to me that we could have done without the 1989
27 Reform Act in terms of the administrative changes. If we had
28

1 just increased the staffing, things would have been a lot
2 better.

3 SENATOR PETRIS: Well, we tried to persuade the
4 Governor of that at the time, but it didn't work. I was
5 always convinced that increasing the staff, even the
6 secretarial help, would have improved the situation
7 enormously.

8 Now, that 30-day current enforcement is down from
9 what period before?

10 MR. AUBRY: I don't really know. I understand it
11 varied all over the state, but I think there's no question
12 that --

13 SENATOR PETRIS: Well, that's a big improvement, I
14 know that.

15 I had another question, but it escapes me now.
16 I'll think of it before we finish.

17 Thanks.

18 SENATOR CRAVEN: Thank you.

19 Is there anyone in the audience who wishes to speak
20 in favor or in opposition, or on an ancillary subject?

21 MR. REITER: I'm Charley Reiter. I'm Legislative
22 Director of the State Building and Construction Trades
23 Council of California.

24 I have a brief or, perhaps, relatively brief,
25 statement.

26 We have some small qualms about our position, which
27 is in support of Mr. Aubry, since Mr. Aubry's sponsor is the
28

1 present Administration, with which we not infrequently find
2 ourselves at cross purposes.

3 However, over the past months, prior to
4 confirmation, the candidate has displayed a certain openness
5 to the discussion of disputes and concerns with our various
6 affiliate organizations as well as with ourselves, and also
7 has been willing to reach the occasional decision concerning
8 these problems. Along these lines, he has continued monthly
9 open forum meetings with labor and industry that have proven
10 intermittently fruitful.

11 On the current national legal assault on
12 construction labor standards affecting apprenticeship and
13 other matters, he has fought to maintain our higher state
14 requirements, at least until the dispute is settled one way
15 or the other. During the state budgetary crisis, he has
16 worked with labor to maintain the Apprenticeship Program at
17 current staffing levels.

18 In months ahead, particularly given the budgetary
19 crisis, we all will face serious problems and needs. Our
20 expectations of the Director will include the
21 re-establishment of Cal-OSHA's ability to perform targeted
22 inspections on high hazard industries, development of
23 strategy and budget to ensure the continued payment of proper
24 pay rates for public works projects, active leadership in
25 exploring way in obtaining long-term funding of BAS.

26 Finally, we believe a concept should be explored
27 during the Director's tenure, which is the transition of the
28

1 present DIR to an expanded Department of Labor, along the
2 lines of that already established in New York. We believe
3 this is an imperative if California labor is to deal
4 adequately with the vast technical sweep of the next century.

5 In closing, we quote an observer who once noted
6 that when a fellow you know obtains some lofty public office,
7 you're glad for his sake but somewhat apprehensive for the
8 future of the country.

9 We're no longer apprehensive, but we will be
10 watching and, hopefully, engaged in continuing dialogue with
11 the Director and his staff.

12 Thank you.

13 SENATOR CRAVEN: That's almost as good as the
14 Lincoln quote we had.

15 [Laughter.]

16 SENATOR CRAVEN: The next gentleman.

17 Mr. President and I had occasion to talk to this
18 gentleman who you may recognize from a prior hearing, or
19 prior hearings, and I felt that the point he that he made was
20 very germane, and I thought this was the appropriate time for
21 him to lay it out for us.

22 Would you state your name, please.

23 MR. TORRES: My name's Arnold Torres. I'm
24 representing a number of Hispanic organizations concerned
25 about the nomination but cannot oppose it. There isn't
26 enough grounds there yet.

27 I did want to bring very specific things to your
28

1 attention, and these are very important articles. This is
2 the series of articles that the Sacramento Bee almost won a
3 Pulitzer Prize for Honorable Mention.

4 I've come before you often, just recently as last
5 week. I'm feeling better, and I'm not going to wear out the
6 welcome, but I do want to bring to your attention some
7 concerns, and I'm going to make some recommendations.

8 I think it's very, very important to raise these
9 issues, bring them to your attention. And, as the
10 representative of labor indicated, we must be very watchful
11 of these things.

12 The positions I will outline to you today are not
13 ones in which we're asking that more money be given. We are
14 at an extremely shortfall in every arena. But there are
15 comments that were made in the article, in the series, that
16 are very troublesome, and I will read them and bring them to
17 your attention.

18 "DIR Director Aubry and James Curry,
19 deputy chief of DIR's division of
20 labor standards enforcement, dispute
21 that."

22 The dispute was that a farmworker indicated that he felt that
23 the Department was on the side of the boss. Quote:

24 "'They are on the side of the
25 boss,' Sanchez said of his
26 experience with the state."

27 "Although it is not reflected
28

1 in DIR's policy manual, they ..."
2 meaning Mr. Aubry and Mr. Curry,
3 "say the agency has a special
4 unwritten policy for farmworkers."

5 The article goes on to indicate that Mr. Curry says
6 that every senior deputy and every deputy in the state knows
7 that farmworkers from filing cases deserve special -- have an
8 unwritten, but receive special accommodation, yet it's not in
9 the policy.

10 Another comment:

11 "DIR investigators who
12 participate in agricultural sweeps,
13 who spoke on the condition they not
14 be named, said the department makes
15 it clear it is not interested in
16 lengthy or involved agricultural
17 cases."

18 "'Most of the time, the
19 objective, if you could call it
20 that, is to create a lot of
21 commotion, make a big show of being
22 out in the field,' said one veteran
23 investigator. 'If you look at the
24 kinds of cases we develop from
25 sweeps, you won't see wage audits of
26 growers or farm labor contractors
27 affecting lots of workers.'"
28

1 It goes on to make additional comments.

2 This is from Mr. Aubry:

3 "I totally reject that.

4 Whenever I speak, whenever I've
5 talked to these people I hear the
6 same thing and I say, "Tell us where
7 to go. Give us complaints." I can
8 recall four or five years ago CRLA
9 was complaining to us about minimum
10 wage enforcement And we said,
11 "OK, we'll work with you, we'll set
12 up sweeps, you tell us where to go."
13 We did, and we found one or two
14 minimum wage violations.'"

15 "A Bee study of files from 90
16 agricultural enforcement cases in
17 1989 and 1990 revealed that few
18 extensive investigations are
19 pursued."

20 There's a number of other things. The bottom line
21 was:

22 "Why does the department do so little?"
23 Lack of money.

24 This is the last one. The more I read them, the
25 more upsetting they are at times, but we have to put things
26 in perspective, I think.

27 "Discouraging Complaints.
28

1 "But under Aubry, revised DIR
2 procedures have made filing and
3 collecting unpaid wages even more
4 difficult."

5 All of this is in front of you.

6 There's one long discussion by the Nisei Farmer's
7 League in Fresno suggesting that they increase the
8 registration fees for contractors, and use the increased fees
9 to put back into investigation. Mr. Aubry said no. He said
10 that there was a law that Governor Wilson had signed about
11 reasonable effort to check contract licenses before hiring
12 people.

13 Mr. Cunha, who represents the Nisei, indicated that
14 it was budget cuts as to why Mr. Aubry said that they would
15 not agree with that approach.

16 The reason why these comments are troubling is
17 because, you know, I've worked in the fields. You know, I
18 apologize for not coming in shirt and tie, and I would think
19 that someone to wears a shirt and tie as often as I do,
20 people would not assume that that's my background.

21 I'm a native of this city before many of you came
22 to this city. And I worked in the fields in Old Town
23 Sacramento. I used to go and catch the buses to go out and
24 work. I was ten.

25 I address these issues not because they're a
26 personal concern, but because they've never been addressed.
27 And when you find someone who's sensitive, the concern is
28

1 that sensitivity is being judged by today's standards. We're
2 much more concerned about that fact that no one was sensitive
3 for over 50 years. So, the sensitivity factor has to be
4 increased; has to be more intense. There has to be more
5 behind the sensitivity. There has to be some substance
6 behind it.

7 I think Mr. Aubry has got a very, very difficult
8 job. He feels that if the complaints come to him, they'll
9 try to do a better job.

10 I think DIR has -- credit has to be given to DIR.
11 They are pursuing an 800 number on complaints. That's
12 certainly an improvement.

13 But I think when you look at this article, and you
14 look at all the articles that have been done over 20 years on
15 the farmworker, things have not improved.

16 The federal regional person in charge of the
17 Department of Labor, U.S. Department of Labor, feels that
18 enforcement is largely symbolic because of the lack of
19 resources.

20 This series of articles, on the last page, makes a
21 number of recommendations that they gleaned from the
22 discussions they had in doing this five-part series. There
23 is one, two, three, four, five, six, seven, eight
24 recommendations that the article and the authors thought
25 would make an improvement in enforcement. Some of them
26 require monies. Our interest is not to necessarily pursue
27 that approach.
28

1 What I am here to try and impress upon you all
2 today is to, as I attempted to do with Mr. Coyle as the
3 Director of Housing, despite me submitting a letter late to
4 Ms. Michel on that letter to Mr. Coyle, I would very much
5 appreciate the opportunity for this Rules Committee to
6 accompany Mr. Aubry's confirmation, which I assume is going
7 to take place today from this Committee's recommendation, I
8 would like to have his confirmation accompanied with a letter
9 from you all requesting that, once again, the Department in
10 this case submit a very clear plan of action to respond to
11 the recommendations made, and to also propose what the
12 Department and the Administration would do with its existing
13 resources to improve the ability to enforce the law.

14 One of the things that I think is very important,
15 you know, I served in Washington for six years, and I worked
16 with two administrations: a Democrat and a Republican
17 administration. It's amazing. Everytime we would go to them
18 to ask them to appoint more minorities, they would always
19 tell us, "Give us names."

20 And my response was, "I'm not an employment agency.
21 I'm not a head hunter. The responsibility and the onus is on
22 you to take that initiative and do it."

23 And I think when it comes to complaints, the onus
24 cannot be on those of us who are concerned about farmworkers.
25 The onus must be in making sure that the government entity
26 responsible for this established the credibility that would
27 allow people to want to come forward.
28

1 And I think because of the tremendous decades and
2 generations of neglect in this arena, we have a tremendous
3 row to hoe before we can really make the kind of substantive
4 changes that some of us would love to see.

5 It is my hope, and the hope of the organizations
6 that I represent, that Mr. Aubry can begin to lay the
7 foundation to establish the attitude that people do want to
8 see a change in the lives of farmworkers, that there is a
9 commitment, that there is a spirit of change here, and that
10 we're not going to deal with it simply as a problem that is
11 so large that we cannot overcome it.

12 So, again, that is my recommendation to the
13 Committee. I think, again, it's a positive one. It's not
14 attempting to slam Mr. Aubry. It's an attempt to try to put
15 the best possible light on a very, very difficult situation
16 which this and many other articles have repeated underscored,
17 but regrettably, very little has been done, regardless of the
18 good intentions.

19 So, I hope that at a minimum, we can do that. And
20 I hope that Mr. Aubry will, in fact, be the person who can
21 establish a foundation of change here. I think he knows the
22 problems quite well. His comments in the paper, beyond
23 these, reflect a knowledge of the problem, the extent of it.

24 He serves on an agricultural commission that I had
25 something to do with in creating the Immigration Act. He
26 serves with two people that I worked against [sic] on the
27 Immigration law: Mike Durando and Russ Williams. And I've
28

1 testified before them when they went down to Coachella.

2 So, I think he is in an extremely, an extremely
3 important position, serving on that national commission, and
4 California's well represented. And I think if anyone can
5 make changes, it's these three individuals; but certainly in
6 the case of Mr. Aubry, he, I think, is very much in a
7 leadership position, and I think he could do a lot more.

8 So, again, I hope that my comments were taken in
9 the proper spirit that they were made, and I hope that
10 someone will make a motion to pursue that .

11 SENATOR CRAVEN: Thank you, Mr. Torres, very much.

12 Any comments? Senator Petris.

13 SENATOR PETRIS: Can you comment on the
14 recommendations in the article? Are you familiar with them?

15 MR. AUBRY: Well, let's see. Some of them don't
16 really apply to us.

17 The first one:

18 "Find out how many farm workers
19 there are. Start now to improve the
20 method by which the census in the
21 year 2000 counts farm workers."

22 One of the things, Arnoldo mentioned the Commission
23 on Agricultural Workers, which I'm a member of, which has
24 eleven members, actually. There's Messrs. Durando and
25 Williams, Delores Huerta from the UFW, and Roger Mahoney,
26 Cardinal Mahoney from Southern California is also a member of
27 that commission. There are a couple of other California
28

1 people, Henry Voss, the Director of Food and Ag., is on it as
2 well.

3 One of the things we're doing in that is urging --
4 one of the things I suspect we will do in our final
5 recommendations, which are due at the end of this year, is to
6 recommend that the Department of Labor pursue greater records
7 in terms of counting farmworkers. There are a couple of
8 studies that are now ongoing: the National Agricultural
9 Workers Survey, the NAWs Survey. We're going to probably
10 recommend that these continue and that more money be spent on
11 counting farmworkers.

12 "Create an interagency task
13 force to pursue and prosecute
14 unlicensed farm labor contractors."

15 You know, we do work with the U.S. Department of
16 Labor in terms of our sweeps. Arnoldo mentioned AB 318, and
17 I thought the article kind of swept over it a little bit as
18 well. The author of that bill was Assemblyman Polanco. In
19 his press release on the bill, he described that as the
20 toughest and most comprehensive state law in the country
21 restricting the use of illegal, unlicensed farm labor
22 contractors. He praised the Governor for looking past the
23 parochial interests of certain agricultural groups.

24 So, I'm not sure that the article was fair in terms
25 of the steps that have been taken by the Administration in
26 terms of trying to deal with the farm labor contractor
27 problem.
28

1 One thing that we have decided to do is to do
2 something that has been done by the U.S. Department of Labor,
3 not so much with regard to farm labor contractors, but rather
4 -- farm labor contractors, but with regard to child labor,
5 and that is to do mail audits. You send out an audit
6 request, and if the farm labor contractor does not respond or
7 send you a document, then you go out and investigate the
8 person. But if they do send you a document, you can check
9 it. You can decide that, perhaps, it needs further
10 investigation. It's another mechanism for us to try to
11 police better farm labor contractors in the field.

12 Arnoldo mentioned the 800 number. One of the
13 complaints that we've heard about our offices is that they
14 are not open at the right times; that farmworkers are in the
15 field and find it impossible to come to some of these
16 offices. And that's true for some crops, not for all crops.

17 But we decided to set up an 800 number which would
18 be staffed in the afternoon and in the evening so that
19 farmworkers could call at night. It would be staffed by a
20 bilingual person. We could mail out complaints, advise the
21 farmworker where to send the complaint, depending on where
22 the work has been performed.

23 I should also point out in terms of interagency
24 task force, that the Governor created the Farmworker Services
25 Coordinating Council, which is made up of the heads of the
26 various state agencies. Its first meeting is a week -- I
27 guess it's next Monday. The Governor's going to kick it off,
28

1 and we're going to be looking at a lot of the problems that
2 are described in this series as well as were described by
3 Arnoldo.

4 "Exempt farm workers from the
5 Department of Industrial Relations'
6 current written policy of having
7 farm workers identify the exact
8 legal entity that cheated them"

9 That's not -- I'm not sure that's a totally
10 accurate portrayal of what our policy is.

11 The problem in any wage claim process in any court
12 of law is getting jurisdiction over the right person, so that
13 if you find that person guilty, you can enforce a judgment.
14 If you don't have jurisdiction over the person, you can have
15 a nice judgment, but it isn't going to matter because you're
16 never going to be able to get the wages for that person.

17 All we attempt to do is, the worker is obviously
18 the best person, at least initially, to determine who the
19 employer is. And we recognize that sometimes it's difficult
20 to tell between a farm labor contractor and a grower. But we
21 need to get that initial information first. We need to, at
22 some point, come to a resolution and to who the legal entity
23 is so that if, in act, we go to hearing, we have a decision,
24 the decision's appealed and it goes to court, you can get
25 jurisdiction over the right employer, and you can get money
26 through the court enforcement procedures if need be.

27 One of the things that we're going to do, and it
28

1 was one of the sections of the article that Arnolde read, was
2 the notion of special procedures. I think that there's a
3 legitimate complaint there that our procedures, while they
4 may be unwritten, should be in writing while they exist.
5 They should still be in writing.

6 What I've directed the Labor Commissioner to do is
7 to put some written procedures in place to give some special
8 protections for migratory labor. One of the things that
9 we're considering trying is a pilot project in which we would
10 allow farmworkers to testify at our Labor Commissioner
11 hearings by phone. Already they're doing that at the
12 Unemployment Insurance, the UI Board. I'm not sure how far
13 we want to expand that in our Labor Commissioner hearings,
14 but I think in the case of farmworkers who are migratory, it
15 makes sense to make that effort.

16 "Modernize the way DIR's Bureau
17 of Field Enforcement conducts
18 agricultural investigations and
19 establishes investigative
20 priorities."

21 I'm not quite sure what that means. We do about 30
22 or 40 sweeps, which is a series of investigations over a two
23 or three day period. Probably one-third to one-half of the
24 sweeps are in agriculture.

25 Arnolde mentioned that the synonymous investigators
26 say that, you know, we're not looking for in-depth
27 investigations. Frankly, I have to dispute that.
28

1 I'm not going to dispute that some people might,
2 for some reason, get that, but I will tell you that whenever
3 I met with those investigators, I told them that we were
4 looking for in-depth investigations.

5 We -- one of the things that I did when I was Labor
6 Commissioner was to try to monitor the productivity and the
7 activities of field investigators. And so, I developed a
8 form, and I wanted to find out: how many inspections people
9 did; how many complaints they issued; how many citations they
10 issued; how much money they assessed; how much they
11 collected.

12 And some people got the idea that, I think -- and I
13 think it was wrongly gotten -- that, you know, you had to
14 have so many investigations to be considered doing a good
15 job. I don't know how many times I told them that if you've
16 got a big in-depth case, and it's taken you a lot of time, I
17 don't care if you're down in the number of investigations.
18 I'm interested in finding good cases and getting people's
19 money to them if they're owed the money.

20 So, I guess I have trouble understanding what
21 "Modernize the Bureau of Field Enforcement" means, and I do
22 dispute, at least personally, that any message was ever sent
23 that in-depth investigations should not be pursued.

24 I think in my opening statement I mentioned a
25 number of things that we're trying to do to improve our
26 enforcement, and perhaps that'll respond to the comment here.

27 "Build more permanent farm
28

1 worker housing"

2 You know, from my travels all over the country at
3 hearings, I wish I could do that, but it's not in my
4 jurisdiction.

5 But I think that the -- one of the things that the
6 Farmworkers Services Coordinating Council of the Governor is
7 going to do is be addressing that very issue.

8 Senator Roberti, I saw your bill that you amended
9 recently to put more money into housing.

10 The other things that really don't apply to me:

11 "Fund the efforts of
12 community-based organizations
13 organizations to provide a fuller
14 range of adult education programs
15"

16 And,

17 "Create regulatory controls for
18 ... toxic pesticides"

19 I mentioned the liaison and the mail audits. You
20 know, one of the things I did when I was Labor Commissioner,
21 and there were a couple of other bills that I worked on that
22 I thought were helpful to farmworkers. There was a bill that
23 was sponsored by CRLA, AB 2306. We -- there's a Labor
24 Commissioner's fund that allows the employees of licensed
25 farm labor contractors to get wages if they can't find the
26 farm labor contractor. And I worked on a bill with CRLA to
27 expand that so that employees of unlicensed farm labor
28

1 contractors can obtain their wages out of that fund.

2 That fund is supported by contributions from the
3 registration fee the farm labor contractors pay.

4 I might also point out that AB 318, the bill that
5 was mentioned also, contained an increase in the registration
6 for farm labor contractors in their fee.

7 SENATOR PETRIS: I thank you very much.

8 I wish there were some way that the Department and
9 other agencies that are involved, such as Housing, could
10 really study this series of articles and try to make some
11 really basic changes.

12 The headline here, the title, is "Farm Workers
13 Used, Abused and Discarded." And I don't think anyone who's
14 been an observer of the farmworker scene for the last six
15 decades at least, maybe more, disagree with that. We've just
16 had a mind set that they don't count. They've always been
17 excluded from protections in the law that are taken for
18 granted by other workers. The creation of the ALRB was a
19 revolutionary concept for that reason. They just always
20 seemed to be shunted aside. It's part of the discarding
21 process. They're expendable. They get sick.

22 The Analyst's Report sometime back indicated that
23 if you want to get sick because of your employment in
24 California, go work on a farm. Be a farmworker. You'll get
25 sick real fast. The percentage of those who get sick on the
26 job is very high compared to others. They couldn't even find
27 number two, it was so far down on the list.
28

1 You know, there's a whole bunch of things. You
2 can't turn it around over night.

3 I would urge you to really go into these reports.
4 I guess you probably already have.

5 MR. AUBRY: I have; I've read them.

6 SENATOR PETRIS: I'm sure you're familiar with
7 them.

8 There's a lot of areas where you could be, because
9 your attitude, I think, has been good as Labor Commissioner,
10 trying to improve the lot of the people over whom the
11 Department has jurisdiction, and there ought to be an
12 increased effort as much as possible.

13 It's really, really disgraceful. I've carried
14 legislation in several of these areas. Housing, when I did
15 housing, I remember there were 10,000 or 12,000 farmworkers
16 living in holes in the ground in San Diego County alone.

17 MR. TORRES: Still are.

18 SENATOR PETRIS: That's still the case?

19 SENATOR CRAVEN: Still there.

20 SENATOR PETRIS: That's not acceptable.

21 I know Housing isn't your department, but it seems
22 to me that maybe this coordinating council will do something.

23 MR. AUBRY: That's what I was going to mention.

24 SENATOR PETRIS: That's just not acceptable, you
25 know, in our state in this year in history. We ought to work
26 real hard to eliminate that.

27 I had a bunch of bills on housing for farmworkers.
28

1 Most of them didn't get anywhere. The prior Governor, even
2 with the support of the Farm Bureau and other groups, vetoed
3 a bill I had to provide low interest loans to farmers to put
4 up the housing. I thought it was unfair to tell the farmer,
5 "You go out and build all this housing." Well, he can't do
6 that. But with low interest loans and a revolving fund at 3
7 percent or so, it was ideal thing. He vetoed it.

8 I don't understand that. We've got to get away
9 from that attitude.

10 Thank you.

11 SENATOR CRAVEN: Senator Beverly.

12 SENATOR BEVERLY: No questions.

13 SENATOR CRAVEN: Anyone in the audience? Yes, one
14 other gentleman.

15 MR. CURTIN: Thank you Mr. Chairman, Members of the
16 Committee. My name is Dan Curtin. I'm the Director of the
17 California State Council of Carpenters.

18 We want to indicate our pleasure at the appointment
19 of Mr. Aubry to the position of Director of the Department of
20 Industrial Relations. We feel that he's knowledgeable in our
21 area of need and labor relations.

22 We also feel that the appointment of Mr. Young is
23 an indication that we're going to have people in this level
24 of government who are familiar with our concerns, and that
25 we're going to get an even-handed approach to the problems.

26 We encourage you to confirm this nomination. Thank
27 you.
28

1 SENATOR CRAVEN: Thank you.

2 You are, in effect, replacing Mr. Hanna?

3 MR. CURTIN: Sort of. The Secretary-Treasurer is a
4 different position, but it's --

5 SENATOR CRAVEN: Yes, I remember.

6 MR. CURTIN: I'm now the Director, so it's a little
7 obscure, but to some degree, yes.

8 SENATOR CRAVEN: Very good. I doubt if it's
9 obscure.

10 Do you wish to sum up, Mr. Aubry?

11 MR. AUBRY: I thank the Committee for the
12 opportunity to appear. I hope in my testimony that I've been
13 able to demonstrate to you that I'm willing to listen to all
14 constituency groups that come before the Department. I hope
15 I'm able to respond to them in some fashion.

16 I hope that the testimony that I've given you has
17 demonstrated that.

18 Thank you.

19 SENATOR PETRIS: I have a question. Not a
20 question, I would urge you -- we don't have time to go into a
21 couple other issues, but one of them is the women's efforts
22 to get a fair share of jobs in the construction trades. My
23 friends in that industry deny that there's been
24 discrimination, and I've met with them in my Oakland office,
25 but I think there is a problem there.

26 I'd like to move the recommendation that a letter
27 accompany the recommendation for confirmation. Perhaps you
28

1 can help us draft it again.

2 Would that be all right, Mr. Chairman?

3 SENATOR CRAVEN: Yes.

4 SENATOR PETRIS: I'd like to make the motion
5 recommended by Mr. Torres.

6 SENATOR CRAVEN: Very well. This would accompany
7 the vote?

8 CHAIRMAN ROBERTI: It would go along with it.

9 SENATOR CRAVEN: Yes.

10 SENATOR PETRIS: I don't think it has to be
11 physically part of it.

12 SENATOR CRAVEN: No, I understand. But this is in
13 connection with what Mr. Torres brought to our attention.

14 SENATOR PETRIS: Yes.

15 SENATOR CRAVEN: Very well.

16 Are you prepared to move, Senator Petris?

17 SENATOR PETRIS: Yes. So move.

18 SENATOR CRAVEN: Call the roll.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye.

22 Senator Mello. Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Petris Aye.

25 Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Craven Aye.
28

1 Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 SECRETARY WEBB: Roberti Aye.

4 Four to zero.

5 SENATOR CRAVEN: Very well.

6 CHAIRMAN ROBERTI: Thank you, Senators.

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 5:20 P.M.]

11 --oo0oo--

12 [The roll was left open on all
13 the appointee confirmation votes
14 where Chairman Roberti and/or
15 Senator Mello had not voted. Both
16 Senators cast "aye" votes on all
17 the confirmations.]
18
19
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 1992.


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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JACQUELINE BRADFORD, Administrator
Tax Preparer Program

THERESA ANN PARKER, Deputy Secretary
Health and Welfare Agency

JOHN D. SMITH, Deputy Director
Office of Administrative Law

CLARK E. WALLACE, Real Estate Commissioner
Department of Real Estate

INDEXPage

Proceedings

1

Governor's Appointees:JACQUELINE BRADFORD, Administrator
Tax Preparer Program
Department of Consumer Affairs

1

Qualifications

1

Experience in Department of Motor Vehicles

1

California Lottery

1

Program

2

Revocation of Registrations

2

Less Time to Resolve Consumer Complaints

2

Outreach Program

3

Questions by SENATOR MELLO re:

Simplification of Tax Forms

3

Use of Electronic Filing System
for Filing Taxes

5

Motion to Confirm

5

Committee Action

6

THERESA ANN PARKER, Deputy Secretary
Health and Welfare Agency

6

Qualifications

7

Background

7

Department of Benefit Payments

7

Department of Finance

8

Service on Conservancies

8

Representative of Administration for
Realignment Negotiations

8

1		
2	Guiding Principles of Agency	9
3	Questions by SENATOR MELLO re:	
4	Administration's Cutbacks in GAIN Program	9
5	Problems with GAIN Program	10
6	Funding for Child Care Programs	11
7	Attempt to Transition People from	
8	Welfare to Work	11
9	Need to Provide Incentives	13
10	Questions by SENATOR PETRIS re:	
11	Governor's Source of Information for	
12	Policy Decisions	14
13	Reasons for More People Moving to California	14
14	Blaming Victims for Failure of Policies	15
15	Welfare as Permanent Way of Life	15
16	Responses	16
17	Immigration Quote Inaccurate	16
18	Department of Finance Report on	
19	Percentage of Taxpayers Vs.	
20	Percentage of Tax Recipients	16
21	AFDC Fastest Growing Sector	16
22	Ways to Change	16
23	Proposal of Gap and Grant Reduction	16
24	National Work Program	17
25	Program in Administration's Proposal	
26	as Part of Federal Waiver Request	17
27	Prospects for Getting Waiver	17
28	Congressional Budget Office Report Shows	
	Recession as Major Reason for AFDC	
	Population Increase	18
	Variation Among States	19

1		
2	Legislative Analyst's Study of	
3	Incentives to Move People Off Aid	20
4	Demographic and Societal Issues	20
5	Request for Current California Figures on	
6	Average Length of Stay on Welfare	21
7	GAIN Program	21
8	Percentage of Goal Funded	22
9	Original Estimate of Cost Projections	22
10	Basic AFDC Grant	24
11	Cost of Housing by Geographic Area	25
12	Request for Average Cost of AFDC	
13	Housing in San Diego	26
14	Motion to Confirm	26
15	Committee Action	27
16	JOHN D. SMITH, Deputy Director	
17	Office of Administrative Law	27
18	Qualifications	27
19	Questions by SENATOR MELLO re:	
20	Positions on Governor's Overturning	
21	Director's Decisions on Two Occasions	28
22	First Instance	29
23	Second Instance	30
24	Motion to Confirm	31
25	Committee Action	31
26	CLARK E. WALLACE, Real Estate Commissioner	
27	Department of Real Estate	32
28	Qualifications	32
	Background in Real Estate Family	32
	Activity in Real Estate Industry	33

1		
2	Service in Department of Real Estate	34
3	Revenues of Department Off Significantly	34
4	Market Turnaround by May 25, 1992	35
5	Statements in Support by SENATOR PETRIS	35
6	Questions by SENATOR CRAVEN re:	
7	Presidency of CAR	35
8	Acquaintances in Oceanside	36
9	Motion to Confirm	36
10	Committee Action	37
11	Termination of Proceedings	37
12	Certificate of Reporter	38
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's appointees appearing today, Jacqueline Bradford, Administrator, Tax Preparer Program.

Ms. Bradford, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MS. BRADFORD: Good afternoon, Senators. My name is Jacqueline Bradford. I'm the Administrator of the Tax Preparer Program, and I appreciate the opportunity to appear before you today.

My qualifications for this position include spending the last ten years in state service in increasingly responsible positions. I was initially assigned to the Department of Motor Vehicles as executive assistant to the Director. My responsibilities there included overseeing the satisfactory resolution of constituent complaints referred to the Director by Legislators and the Governor's Office. In addition, I assisted in the development of the first Customer Relations Unit in that Department with a direct reporting relationship to senior management.

I later transferred to the California Lottery, where I managed the Winner Awareness Program in the Public Affairs Department. This effort was geared toward maximizing opportunities to publicize million dollar winners at minimal cost to the Lottery.

During my last two years at that department, I also

1 managed the administrative functions of the Public Affairs
2 Department. My primary assignment was to establish fiscal and
3 personnel accountability within that unit, and I effectively did
4 so.

5
6 In June of last year, I moved into my present
7 position at the Department of Consumer Affairs as the Tax
8 Program Administrator. Our program currently regulates 30,000
9 tax preparers and tax interviewers. As Administrator, I intend
10 to focus the program's efforts on more effective enforcement of
11 the consumer protection statutes governing this program. Under
12 the strong and innovative leadership provided by Director Jim
13 Conran and his senior management team, I believe we can greatly
14 improve the level of consumer protection historically provided
15 by the program.

16 As a tangible example of that belief, during fiscal
17 year 1990-91, the program revoked one tax preparer's
18 registration. During this fiscal year, we have worked with the
19 Attorney General's Office to successfully revoke the
20 registration of six preparers. We have an additional eight
21 cases pending which are expected to result in revocation, and we
22 will continue to file cases as the year unfolds.

23 We have also reduced the time required to resolve a
24 typical consumer complaint from nine to twelve months less than
25 a year ago, to a current average of one to two months. We're
26 moving forward with legislation which, if approved, will enable
27 us to take both criminal and administrative actions where
28 appropriate against unregistered or unscrupulous tax

1 practitioners.

2 We also intend to design and implement an aggressive
3 consumer outreach program to educate Californians so that they
4 are fully aware of their rights as consumers and the protections
5 afforded by our program.

6 While we've also been successful in establishing a
7 good working relationship with the industry, our primary
8 objective has been clearly articulated by our Director. The
9 protection of California consumers is now the Tax Preparer
10 Program's top priority. If confirmed, I will continue to
11 aggressively carry out that mandate.

12 I'd be pleased to answer any questions you have about
13 our program or my suitability to fill this position.

14 CHAIRMAN ROBERTI: Are there any questions of Ms.
15 Bradford? Senator Mello.

16 SENATOR MELLO: You're targeting preparers and the
17 clients.

18 One of the things that I read recently, or last
19 year, is on the tax forms themselves. My question really is
20 whether or not you tried to ask for more simplification of the
21 tax form?

22 What happened, I think Consumers Union or somebody
23 sent in a typical situation of income and amount of deductions
24 and so forth, to H&R Block and parts of the Big Eight and
25 others, to see whether or not what kind of answers they got
26 back. And they got eight different answers on the amount of
27 taxes owed, and the range was several hundred percent difference
28

1 between one and the other.

2 This concerns me that people like that cannot agree
3 on a uniform -- on a question that should have, I think, the
4 same answer. I'm not questioning their qualifications of the
5 preparer.

6 I think that the problem lies in the forms which make
7 them very complex.

8 My question is, are you working with the State
9 Franchise Tax Board and also maybe the Internal Revenue Service
10 to see whether or not you can contribute to some uniform tax
11 form?

12 And the other thing is, a lot of people feel that the
13 state income tax should be a percentage of your federal tax, you
14 know, by just having it simplified so you don't have to file
15 another form. You'd merely pay a pro rata share of what you owe
16 the federal government.

17 I don't say I support that fully, because some states
18 have more oral depletion allowance than others.

19 I'd like to hear your comments on that.

20 MS. BRADFORD: First of all, we have absolutely no
21 input into tax policy as it's established. The Franchise Tax,
22 we just don't have a relationship with them that allows us to
23 have any input as to tax policy.

24 We do -- we do contact the Forms Division
25 occasionally, and we have talked with them. This matter of
26 simplification is something that has not been brought to my
27 attention before.

1 I am aware of that news story you're referring to,
2 and it's something that falls under Franchise Tax Board, so
3 we've never worked with them on it.

4 I understand through my contacts with the Internal
5 Revenue Service, however, that more than 50 percent last year of
6 the taxes filed through companies like H&R Block, and by tax
7 preparers generally, were filed through the electronic filing
8 system. And people who file through that system generally use
9 the computer programs, and it's cut the error rate at the IRS
10 from something like 12 percent down to under two percent this
11 year. Checking the returns they've received this year, it's
12 below two. It was right at two last year.

13 So, that is going to go a long way toward reducing
14 the error rate in taxes.

15 SENATOR MELLO: So you think we are making progress?

16 MS. BRADFORD: I think we're making progress. I
17 think it's probably a little slow, but the computer programs are
18 catching on very quickly. And from what I've heard from the
19 IRS, and they have really been my best gauge at this point, I
20 would think that another year or so will make a tremendous
21 different because electronic filing is the wave of the future.

22 SENATOR MELLO: Thank you very much.

23 MS. BRADFORD: You're welcome.

24 CHAIRMAN ROBERTI: Any further discussion? Any
25 further questions?

26 Is there any opposition in the audience?

27 SENATOR CRAVEN: Move Ms. Bradford.
28

1 CHAIRMAN ROBERTI: Senator Craven moves confirmation
2 be recommended to the Floor.

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Beverly.

5 SENATOR BEVERLY: Aye.

6 SECRETARY WEBB: Beverly Aye.

7 Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Mello Aye.

10 Senator Petris. Senator Craven.

11 SECRETARY WEBB: Craven Aye.

12 Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 SECRETARY WEBB: Roberti Aye.

15 CHAIRMAN ROBERTI: The vote is four to zero;
16 confirmation is recommended to the Floor.

17 Congratulations.

18 MS. BRADFORD: Thank you very much.

19 CHAIRMAN ROBERTI: The next appointee is Theresa Ann
20 Parker, Deputy Secretary of Health and Welfare Agency.

21 Senator Craven, I have to return a phone call. I
22 will turn the gavel over to you. I shall be back shortly.

23 We'll start by asking you what we ask all the
24 Governor's appointees, and that is why you feel you're qualified
25 to assume this position?

26 MS. PARKER: Thank you Mr. Chairman and Senators.
27 Good afternoon. My name is Theresa Parker, and I want to thank
28

1 you for the opportunity to present my qualifications for the
2 position of Deputy Secretary in the Health and Welfare Agency.

3 Before I go into my qualifications, I just wanted to
4 introduce my daughter, Shannon Parker, who's here with me today,
5 and know that I have a very supportive family which I believe is
6 always an asset for anyone who has a -- to try to meet the
7 difficulties of being successful in any demanding job.

8 Going into my background, although not a California
9 native, I did come to California very early in my childhood,
10 when my father came to practice medicine and actually practiced
11 medicine in Sacramento County in a rural part of the county.
12 Growing up in the household of a country doctor, and later
13 working at his office, I had an early introduction to health
14 issues and the social responsibilities to citizens in our
15 community, particularly citizens who were ill or economically
16 disadvantaged.

17 While attending college, I had the opportunity to
18 pursue a different route of public service and became an
19 employee of the State of California in a department that was
20 within the purview of the Health and Welfare Agency, then the
21 Department of Benefit Payments, which is now the Department of
22 Social Services.

23 Upon graduation, I moved to the Department of Health
24 Services and had a number of analytical positions with
25 increasing responsibility, primarily involving Medi-Cal policy
26 and fiscal policy.

27 In 1980, I had the opportunity to move to the
28

1 Department of Finance, where I served for over a decade in the
2 Department, working almost exclusively on health and welfare
3 issues. Primarily the last six years, I was the Program Budget
4 Manager for Health and Welfare and Environmental Programs.
5

6 During my tenure in the Department of Finance, I
7 worked on major issues having to do with Health and Welfare
8 policy and fiscal issues, some of which included the 1982
9 Medi-Cal reforms, staffing standards, and accreditation issues
10 with the State hospitals and developmental centers, development
11 of the GAIN Program, which happened to be the model by which the
12 feds modeled their Federal Jobs Program after, and also the
13 expansion of funding for AIDS care and prenatal care.

14 In addition, I had the opportunity to work on the
15 local government assignment and had -- through that assignment,
16 was able to be exposed the county fiscal responsibilities as
17 they serve as our agent in the implementation of many Health and
18 Welfare programs.

19 Besides my role in Health and Welfare programs while
20 at Finance, I also served as a Commissioner to the California
21 Tahoe Conservancy and the San Francisco Bay Conservancy and
22 Development Commission.

23 Last year, I was given the opportunity to serve
24 Governor Wilson as part of the Health and Welfare team under
25 Secretary Gould. Upon arriving at the Agency, I was given the
26 responsibility as serving as the Administration's representative
27 in the negotiations and implementation of the major bipartisan
28 legislation for state and local realignment of Health and

1 Welfare programs.

2 As part of the Health And Welfare Agency's team, I
3 share with Secretary Gould the guiding principles that we intend
4 to use to move forward as far as Health and Welfare programs in
5 the coming years, and those being to move to more preventative
6 approach to health care services through government; to break
7 down the barriers to improve services; to provide better access
8 to primary prevention health care; and to promote
9 self-sufficiency in relation to individual's capabilities.

10 In closing, I recognize that these are difficult
11 times, and there are complex issues before the Health and
12 Welfare Agency, affecting the daily lives of many Californians.
13 I look forward to working cooperatively to help achieve the best
14 possible solutions to these difficult tasks before us.

15 I'd be happy to answer any questions.

16 SENATOR CRAVEN: Thank you very much, Ms. Parker.

17 Do any of the Senators have questions at this time?
18 Senator Mello.

19 SENATOR MELLO: Thank you, Mr. Chairman.

20 You mentioned you gave project GAIN a very glowing
21 compliment, I guess, saying that the feds copies that program
22 after what we had done here in California.

23 I don't look at GAIN as being that successful. In
24 this year's budget, how much did the Administration cut back on
25 the funding for project GAIN?

26 MS. PARKER: Actually, there's no funding reduction
27 in the budget for the GAIN program. In fact, the budget
28

1 proposes to expand on a portion of the GAIN program: job search
2 workshops for AFDC recipients. And there is approximately \$30
3 million of new funding, both General Fund and federal funds, for
4 that activity.

5 SENATOR MELLO: I believe in reading the budget
6 summary, I believe there are some cutbacks within the GAIN
7 program. I forget now what categories.

8 At any rate, I think I was not a supporter of GAIN,
9 and I think the deficiencies are pointed out now by your stating
10 that they're putting more money into the job search.

11 The problem that I see was, when it originally came
12 out, it allowed about two months for the recipient to find a job
13 through a job search program. But they offered no assistance
14 really in helping to enhance their skills, or point them in the
15 right direction for finding a job. And then the recession comes
16 along, and it's even more difficult to find a job.

17 For example, child care for single parents on AFDC,
18 if we're trying to get people off of welfare, the Governor, of
19 course, wants to cut back 25 percent. And I don't know what the
20 recipient is going to do facing that kind of cutback.

21 My hope is that we can transfer people on welfare to
22 jobs. In order to do that, we have to first find a job, train
23 them for the job, providing the child care, provide
24 transportation.

25 And also secondly, as even the Legislative Analyst
26 came out with their report here just a few days ago that people
27 on welfare ought to be able to keep their grant while they're
28

1 finding a job in order to get more stable and to make the
2 transition from welfare to a job.

3 I just wondered what are your comments in that
4 regard?

5 MS. PARKER: Well, Senator, a couple of comments.

6 One, the Governor's budget for next year proposes
7 over half a billion dollars for child care programs, including
8 some additional funding in order to implement recent legislation
9 sponsored by Assemblymember Willie Brown, to expand that child
10 care to AFDC recipients by being able to draw down additional
11 federal dollars for child care that's currently paid for by the
12 Department of Education and wholly state expense. And by
13 getting additional federal dollars, we'll be able to expand
14 child care throughout to a broader group of children that
15 currently are not eligible to receive government support.

16 So, we are in the process of trying to expand child
17 care and to target particularly AFDC recipients.

18 With respect to welfare reform, the Governor's
19 proposal is very much oriented to try to move people and
20 transition them off of welfare to work. And part of that
21 proposal is to, one, have a variety of activities to provide,
22 for example, labor market information in the county welfare
23 offices so that the information will be available for people
24 about what jobs are available. But also from the standpoint of
25 trying to provide them incentives so that there is -- that the
26 dollars that they can earn, that they are not penalized by
27 having their grants reduced dollar for dollar for every dollar
28

1 that they receive in earned income.

2 So, by providing a gap between the amount eligible
3 for aid and the amount that they would have reduced by new
4 income, it provides an incentive for people to go out and work
5 and get into the labor force.

6 SENATOR MELLO: Would they require a federal waiver
7 in order to do that?

8 MS. PARKER: Some of the Governor's proposals require
9 a federal waiver, yes, Senator.

10 SENATOR MELLO: Let me ask you about child care now.
11 Just some quick arithmetic, you say half a million dollars --

12 MS. PARKER: Half a billion dollars; five hundred
13 million dollars.

14 SENATOR MELLO: Going into child care?

15 MS. PARKER: Correct.

16 SENATOR MELLO: Five hundred million dollars, there's
17 1.7 million people getting child care, counting the spouse and
18 the children; is that correct?

19 Based on your own statistics, I think it's about 1.7
20 million total.

21 MS. PARKER: Are you talking about the number of
22 people who are on aid?

23 SENATOR MELLO: On AFDC, yes. I think it's a million
24 children, and 700,000 parents.

25 MS. PARKER: One thing that I think it's important to
26 point out, Senator Mello, is that for AFDC recipients, not every
27 family would require child care. To the extent that a parent
28

1 went out to work, if the child was in school and the parent was
2 working during school hours, they wouldn't need child care.

3 SENATOR MELLO: I realize that, but I'm just saying,
4 taking \$500 million for 1.7 million potential clients, not all
5 of them will be there, it comes to about \$3 per year per person.
6 And child care costs \$200-800 a month, you know, in the private
7 sector and the other public programs.

8 So, I just hope, I think that's part of the key. You
9 have to have child care; you have to have a way to get them to
10 that job. But if we somehow neglect to provide the help,
11 they're just going to keep dropping on welfare, and then we're
12 finding that society's getting awfully more negative towards
13 welfare for many reasons. We just don't provide the incentives
14 for getting people off of welfare.

15 MS. PARKER: One follow-up comment, Senator, that
16 amount of money that I was referring to is basically for
17 subsidized slots for AFDC recipients that do go out and work.
18 The amount of money that they would pay for child support would
19 be a disregard against the amount of dollars that they would
20 receive for AFDC. So, to the extent that they spent that money
21 for child care, it would be used as a disregard before any of
22 their grant was reduced to offset the income received. So,
23 those dollars are not counted in the 500 million that I was
24 talking about.

25 SENATOR MELLO: It's certainly a step in the right
26 direction. I just hope that we can be more successful than we
27 have been in the past with project GAIN.
28

1 Thank you.

2 SENATOR CRAVEN: Thank you.

3 Senator Petris.

4 SENATOR PETRIS: I may have missed this. If so, I'd
5 be happy to back off.

6 I'm curious as to the inner circle in the Governor's
7 shop on welfare, the whole welfare subject. I'd like to know
8 who supplies him with information before policy decisions are
9 made? Does that come from the Secretary of Health and Welfare?
10 Does it come from the Finance Department, the shop that you were
11 in before? Where does it come from?

12 MS. PARKER: Well, I can't speak to all parties, but
13 clearly the Health and Welfare Agency has responsibility for
14 welfare programs, gives policy input to the Governor.

15 SENATOR PETRIS: Well, I'm a little concerned because
16 of statements he's been making. I know they make good copy, but
17 they're just not supported by the studies that have been made.

18 He's repeatedly said that our budget problems are due
19 to the immigrants and AFDC. and people are pouring into
20 California just to get on AFDC.

21 Every study that I've seen shows that's just not the
22 case. The most recent one on a national basis, examining the
23 question of why people move from one state to the other, the top
24 three reasons are all job-related. Number one, they're being
25 transferred from one job to another by their own company.
26 Number two, they're seeking a job in California, not welfare.
27 And number three, they already have a job that's been arranged
28

1 before the move.

2 You put those three together, and it outdistances all
3 these other reasons, like the weather, and other conditions in
4 California.

5 I think the Governor's doing a great disservice to
6 our program when he keeps repeating this old bromide that, if it
7 weren't for the poor, we wouldn't have the problems.

8 I'm sick and tired of having people blame the
9 victims, you know, of our policies, especially the executive
10 branch at both the national and local levels. I'm sick and
11 tired of having them blame the victims for the problem.

12 I don't know of any poor people that contributed to
13 the cause of the recession. I don't know any poor people that
14 have been running General Motors. General Motors is firing
15 70,000 people, whatever that number is. I don't think that was
16 done by anybody on welfare.

17 And yet, you know, whenever some leader gets painted
18 into a corner on the problem, well, we have too many people on
19 welfare. The statistics just don't bear that out.

20 Another bromide is, well, they've adopted this as a
21 permanent way of life. I've seen studies going back 20 years,
22 and there hasn't been one year where they have been able to show
23 that the general condition of people on welfare is one of
24 settling in permanently. I mean, the latest figures that I've
25 seen for 1990, it shows the average is 25.5 months; the average
26 time on welfare. In 1977, it was 38.6 months, so it's dropping
27 rather than going up.

1 Yet, if you read nay of the comments made as answers
2 to our budget problem, you run into these false statements time
3 and again.

4 That's why I asked, who is it that's feeding the
5 Governor this stuff? Or does it come out of his head? You
6 can't help me on that, I guess.

7 MS. PARKER: Well, I can try to take a stab at it,
8 Senator.

9 I think your first comment about immigration, I think
10 that's a misquote. I think the Governor -- it was primarily a
11 Times article, and we tried essentially tell people that that is
12 not what the Governor had to say.

13 Secondly, the point about AFDC being a contribution
14 to the budget problems, I think, comes out of a Department of
15 Finance report, looking at the percentage of taxpayers to tax
16 receivers and acknowledging the growth in AFDC program, and
17 forecasting projections of that through the year 2000.

18 More specifically, though, some of your comments, I
19 think that what we've tried to say is that it is one of the
20 fastest growing programs that we have. It doesn't necessarily
21 provide some incentives to work for individuals because, to the
22 extent that they go out and earn a dollar, then a dollar of that
23 is taken away. But we --

24 SENATOR PETRIS: Should we change that?

25 MS. PARKER: We've moved in that direction a little
26 bit by trying to propose a gap, and that's what we've done by
27 having a grant reduction.
28

1 SENATOR PETRIS: Well, we had the Work Program
2 nationally, and one of Reagan's first acts as President was to
3 kill it. He said, "What are we doing paying people who are
4 already drawing welfare?" Well, these people were working; it
5 was a transition. The working poor who are on welfare and were
6 allowed to earn a certain level of income until the transition
7 was complete. That was working beautifully. He comes along and
8 he says, "What are we doing paying people on welfare? They're
9 already getting money from welfare, now they're getting money
10 from the job." Down went the program.

11 I see the same attitude here which --

12 MS. PARKER: Senator Petris, that proposal is back in
13 as part of the waiver request that we had with the federal
14 government to allow that work incentive to be part of the
15 package, so that when welfare recipients go in and work, that
16 they have the income disregard as part of the -- one of the
17 incentives. So, if they go out and earn money, they're not
18 disadvantaged by it.

19 We agree with you, and that's again part of the
20 package.

21 SENATOR PETRIS: What are the prospects of getting a
22 waiver?

23 MS. PARKER: We've had early -- we sent a draft
24 package back to the federal government. We've had discussions
25 with them. One of our primary issues with them at the moment is
26 the evaluation of the demonstration project and how that would
27 be carried out.
28

1 We've had very positive discussions. We have not
2 submitted a formal package to them yet, but we anticipate a
3 positive response.
4

5 SENATOR PETRIS: I think part of this is the long
6 denial syndrome that the President went through, and I guess
7 part of it rubbed off on the Governor. This notion of
8 spotlighting the fact that AFDC is the fastest growing part of
9 the program, without looking at the reason, also does a
10 disservice.

11 The Congressional Budget Office says the reason is
12 the recession. That's why people are getting laid off. That's
13 why companies are closing down. That's why thousands of people
14 are getting thrown out of work every month. It's the recession.
15 It's not somebody's desire to be -- preference to be on welfare
16 as opposed to a job.

17 And there again, I'd like to see some better
18 understanding coming out of the Administration in recognition of
19 that.

20 I read from time to time there's a job opening at the
21 Post Office, or that hotel in Chicago that opened up -- I forget
22 the number of jobs. But they got, I don't know, they got
23 thousands of applicants that stayed up all night and got in the
24 line at midnight, under bad weather conditions, just to be in
25 line to get the job.

26 Now, that shouldn't happen, because the notion that's
27 being put out is, people would rather be on welfare than go to
28 work. That's just absolutely untrue for the overwhelming

1 majority of Americans.

2 Sure, there are -- some people might prefer to do
3 that, but it's not endemic. It's not the majority thing. Most
4 people would rather be working.

5 And to accuse them of sitting around and preferring
6 to be on welfare on one hand, and not acknowledging that jobs
7 aren't available on the other, just compounds the problem and
8 makes it tougher for us to try to solve it, it seems to me.

9 And to the extent that you're, you know, part of the
10 operation in Welfare, I would appreciate it if you'd bear that
11 in mind. If I'm wrong somewhere, I'd like you to point it out.

12 There are other studies, too. It isn't just the
13 Congressional Budget Office, that links a lot of these
14 developments to the recession.

15 MS. PARKER: Senator, I've looked at the CBO study,
16 and I -- clearly, that's the indication they have, but I think
17 it's a matter of almost look at it on a state-by-state basis.

18 It's interesting when you look at the variation among
19 states for the -- even within the recipients on aid, you were
20 talking earlier about the average length of time on aid; 25
21 percent of the people on aid in Maryland are there for longer
22 than three years. In California, 50 percent of the people on
23 aid are there for longer than three years.

24 So, there is a -- you have to almost kind of look
25 within states and not kind of make a general statement about
26 broadly what's happening.

27 The other thing to point out is that the Legislative
28

Analyst's Office had done a study last year looking at the incentives of -- to welfare recipients of moving off aid, and they had two comments. One of them was the comment that the program didn't provide a lot of incentive, again, because you're penalized; for every dollar you're earning, you lose a dollar. But also the fact that the major reason for people coming on aid is not necessarily what's happening with the economy, it has more to do with demographic and societal issues: the increase in the number of women of child-bearing age; the number of -- increase in teenage births; the number of births, period, to women. Those are really some of the major factors that are contributing to the growth in AFDC, as opposed to just what's happening with the economy.

SENATOR PETRIS: What proportion does each bear?

MS. PARKER: I don't know that anybody knows that.

SENATOR PETRIS: There's something from each source, I guess.

MS. PARKER: I think what we're saying is that those, we believe, are the primary factors, as opposed to the recession being the primary factor.

SENATOR PETRIS: So, do you think the Budget Office conclusions aren't accurate?

MS. PARKER: Well, I think that they made some conclusions looking at the nation and --

SENATOR PETRIS: Not state-by-state?

MS. PARKER: Correct. And I think that you almost have to look at it state-by-state to see what's happening within

1 your state.

2 The percentage of tee pregnancies varies by state.
3 That would be a factor.

4 SENATOR PETRIS: I know they're high in California.
5 We know that.

6 MS. PARKER: Correct.

7 SENATOR PETRIS: Do you have the current figures for
8 California on the average length of stay on welfare? You say
9 that 50 percent are more than three years.

10 MS. PARKER: Correct.

11 SENATOR PETRIS: What's the average? Is this number
12 correct, 25.5 months?

13 MS. PARKER: Senator, I'd be happy to get that
14 information for you. I don't want to say that it's correct.

15 That ends up being a statement that, depending on how
16 you word it, can mean a lot of different things.

17 SENATOR PETRIS: Okay.

18 MS. PARKER: I'd be happy to get that information for
19 you.

20 SENATOR PETRIS: Yes, if you would, thank you.

21 What about the GAIN program? I haven't heard much
22 feedback since the latest effort on GAIN that was carried by
23 Assemblyman Agnos.

24 Did we have an experimental county or two to begin
25 with, and then extend it to everybody, or is that now statewide?

26 MS. PARKER: The GAIN program is statewide, Senator.
27 It's --
28

1 SENATOR PETRIS: How's it doing?

2 MS. PARKER: Well, the -- it's under evaluation
3 within -- and the evaluation hasn't been completed yet.

4 So, I think the Administration has proposed some
5 changes to the GAIN program from the standpoint of making it a
6 little bit more work-oriented than just education-oriented, or
7 at least allow for welfare recipients who are going through GAIN
8 to be able to move through both portions of the program at the
9 same point in time, so that if they wanted to focus more on
10 work-related experiences, that they wouldn't have to necessarily
11 go through some education components if they wanted to focus on
12 something that's going to help them get a job.

13 We -- the GAIN program is viewed by many people,
14 depending on the county, as being a very positive program. It's
15 never been a program that has been fully funded, so it's not
16 available to all people who could be eligible for it.

17 SENATOR PETRIS: What percentage of the goal has
18 actually be funded?

19 MS. PARKER: You know, I think that it varies almost
20 by year and by the caseload. The GAIN has not received
21 substantial increases over the years, but to the extend that the
22 caseload, depending on its eligible, we've not been able to
23 target as many people with fixed amounts of money.

24 SENATOR PETRIS: I don't remember the original
25 estimate of what it would cost, the projections. Do you have
26 that?

27 MS. PARKER: I don't have it in my head. I was
28

1 actually in Finance at the time that we did that, and that was
2 six or seven years ago.

3 I think we -- our estimates were probably by now that
4 we were going to be having substantial savings that we could be
5 redirecting to probably take care of our fiscal situation.
6 That's not materializing.

7 SENATOR PETRIS: Why not?

8 MS. PARKER: I think that at the time, in fact, the
9 Department of Finance analysis said that the GAIN probably --
10 would probably cost more than it would save, but in the long
11 run, that they felt that it was a meritorious program, and it
12 was a -- and that resources should be targeted in this
13 particular area.

14 SENATOR PETRIS: How long is long-term?

15 MS. PARKER: Long-term?

16 SENATOR PETRIS: In the long run. You said, "in the
17 long run" it would be plus. How long is "long run"?

18 MS. PARKER: I think --

19 SENATOR PETRIS: According to the estimate.

20 MS. PARKER: -- what I'm trying to say is that there
21 were some people believed -- that believed that by the sixth or
22 seventh year of implementation, which we're in now, that we
23 would be saving dollars more than we're expending, and that's
24 not happening.

25 SENATOR PETRIS: Is that partly due to a lack of
26 funding in the first place?

27 MS. PARKER: I think that the biggest reason is that
28

1 once the GAIN program went into effect, that there was a
2 realization that there were some impediments to people going out
3 and getting employment that people didn't initially see. Some
4 of the impediments were, frankly, just basic skills, basic
5 education.

6 SENATOR PETRIS: It included training, though;
7 didn't it?

8 MS. PARKER: It does.

9 SENATOR PETRIS: Those who get the training should
10 have a better chance at it?

11 MS. PARKER: Right, but as a result of sort of
12 finding out that people needed some basic education, a lot of
13 people are moved through the education component that wasn't
14 visualized in the beginning. And instead of a greater
15 percentage of people going into sort of job training, most
16 people are going through education, which is more expensive,
17 takes a long period of time.

18 SENATOR PETRIS: To get back to the AFDC, do you know
19 the figures for the basic grant for a woman and two children?

20 MS. PARKER: Well, we usually, when we talk about a
21 basic grant for a woman and two children, it's \$633 a month.

22 SENATOR PETRIS: And that's statewide?

23 MS. PARKER: Correct.

24 SENATOR PETRIS: It doesn't vary by region.

25 MS. PARKER: Correct.

26 SENATOR PETRIS: Is that person eligible for food
27 stamps?
28

1 MS. PARKER: Yes and Medi-Cal.

2 SENATOR PETRIS: And Medi-Cal.

3 Have you lived in Sacramento a long time?

4 MS. PARKER: Virtually all my life, Senator.

5 SENATOR PETRIS: You went to school here, I know.

6 MS. PARKER: Yes, correct.

7 SENATOR PETRIS: Do you know of very many places in
8 Sacramento where you can get an apartment for a woman with two
9 children at below \$600 a month?

10 MS. PARKER: Senator, I remember that this was an
11 issue that you raised last week with Secretary Gould.

12 One of the things that we're trying to look at is not
13 only what the cost of housing is by geographical area, but to
14 see if we can't find some information out about what the average
15 rent, or what rents are paid by people who are on AFDC.

16 We have some old studies that show that the average
17 rent paid by an AFDC recipient is in the \$350 range, and so it's
18 an indication that people are finding housing, or perhaps --

19 SENATOR PETRIS: Is that a statewide average?

20 MS. PARKER: Correct.

21 SENATOR PETRIS: I'd be curious. When Secretary
22 Gould was here, I hadn't checked the papers, but I had somebody
23 check the papers for me where I live in Oakland and San
24 Francisco. I didn't see any at \$350 for that size of a family.

25 MS. PARKER: It is an average, Senator.

26 I think what we're trying -- what we would like to
27 try to do is see if we could find some information about what
28

1 people are paying for rents, and whether or not we have the
2 ability to do that by geographical location.

3 SENATOR PETRIS: Yes, I'd be interested in San Diego,
4 too, for two reasons. One, it's a metropolitan center, and the
5 other, I know a person in the building who lived there once upon
6 a time.

7 Thank you very much.

8 CHAIRMAN ROBERTI: Any other questions? Senator
9 Craven.

10 SENATOR CRAVEN: No, sir. We have not gone to the
11 audience yet.

12 CHAIRMAN ROBERTI: I guess I'm re-assuming the
13 Chair, Senator.

14 Is there anybody in the audience in support? In
15 opposition?

16 Any further questions from the Committee?

17 SENATOR CRAVEN: Move Ms. Parker.

18 CHAIRMAN ROBERTI: Senator Craven moves confirmation
19 be recommended to the Floor.

20 Secretary will call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye.

24 Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Mello Aye.

27 Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye.

3 Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Craven Aye.

6 Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 SECRETARY WEBB: Roberti Aye.

9 CHAIRMAN ROBERTI: The vote is five to zero;
10 confirmation is recommended to the Floor.

11 Congratulations.

12 Mr. John D. Smith, Deputy Director of the Office of
13 Administrative Law.

14 MR. SMITH: Good afternoon.

15 CHAIRMAN ROBERTI: Mr. Smith, we will ask you what we
16 ask all the Governor's appointees, and that's why you feel
17 you're qualified to assume this position.

18 MR. SMITH: Senator Roberti, Members of the
19 Committee, I appreciate the opportunity to appear before you
20 today.

21 In March of 1986, I was appointed and confirmed by
22 the Senate for this very same position.

23 In October of 1990, I was appointed Director for the
24 Office to fulfill the term of the last Administration. I then
25 carried on as acting Director until May of 1991, at which point
26 I was appointed Deputy again.

27 In my six years at OAL, I have directed or been
28

1 involved in all aspects of the Office, and I believe my
2 background and experience provides me with the requirements for
3 this position.

4 If you have any questions, I'd be happy to answer
5 them.

6 CHAIRMAN ROBERTI: Are there any questions of
7 Mr. Smith? Senator Mello.

8 SENATOR MELLO: Mr. Chairman, just a brief question.

9 When you said you were involved in all activities of
10 the Office, it just seems like here lately, the Governor
11 overturned the Director of Administrative Law on two occasions.
12 One of them being his decision on Proposition 103, the
13 roll-backs, and the other one was four or five months ago, a
14 rate increase that your Office, I guess, approved, and then the
15 Governor had to overrule your Department.

16 MR. SMITH: That's correct, Senator.

17 SENATOR MELLO: Are you involved, and do you agree
18 with the actions of your Department, or do you agree with the
19 actions of the Governor?

20 [Laughter.]

21 SENATOR MELLO: This is not a loaded question. I
22 didn't read it from here, either.

23 SENATOR PETRIS: Is this on the record or off?

24 [Laughter.]

25 MR. SMITH: Well, there were two different
26 circumstances.

27 I would point out that my duties primarily now are
28

1 administrative. But I am involved, to a certain extent, in the
2 legal decisions.

3 The first instance, when we disapproved a regulation,
4 it was because our Director felt that there was not the basis
5 for an emergency. And the Governor overruled Mr. Garcia's
6 decision, stating that he felt that this was better off handled
7 in the courts.

8 In the most recent decision --

9 SENATOR MELLO: What was your philosophical position
10 on that issue?

11 MR. SMITH: Whether or not -- as to whether or not
12 there was an emergency?

13 SENATOR MELLO: Do you agree with the findings of
14 your Department, or do you feel it was justified to being
15 overruled by the Governor?

16 MR. SMITH: No, I agree with our Director, certainly.

17 SENATOR MELLO: In other words, you disagree with the
18 Governor's position, I guess in overruling your Director.

19 MR. SMITH: Well, the Governor in that instance did
20 not really elaborate, so I wasn't -- as he did in the second
21 instance, when he overruled us. I don't know if he felt that
22 Mr. Garcia's decision was actually correct in that instance, or,
23 as he did in the second, that he felt that Mr. Garcia's position
24 was correct, but that for other reasons he was going to overrule
25 us.

26 SENATOR MELLO: Let's go to the second one, the most
27 recent one.

1 MR. SMITH: That involved -- and again, I was not
2 involved in all the discussions -- both the Calfarm case and
3 Prop. 103 anticipates a hearing whereby an insurer can build a
4 record to contest a rate in court.

5 The way the Commissioner's regulations were
6 structured, as I understand it, they put some limitation on the
7 ability to build that record for the court. And Mr. Garcia felt
8 that that was inconsistent with both Prop. 103 and the Calfarm
9 case.

10 And I agree with that decision.

11 SENATOR MELLO: Do you agree -- is Mr. Garcia the
12 Director or a Commissioner?

13 MR. SMITH: He's the Director.

14 SENATOR MELLO: Do you agree with the Director's
15 position then?

16 MR. SMITH: I agreed that there is a legal --
17 legitimate legal issue there.

18 And I do not disagree with the Governors that this
19 matter, perhaps, should be speeded along to the courts and let's
20 get a resolution to this thing.

21 SENATOR MELLO: The Governor's decision really
22 overturned what the Director had done; is that correct?

23 MR. SMITH: That's correct.

24 SENATOR MELLO: So, I guess you feel both the
25 Director and the Governor were right. Isn't that your position?

26 MR. SMITH: Yes, in this instance, definitely.

27 SENATOR MELLO: You ought to run for the State
28

Senate.

[Laughter.]

SENATOR MELLO: Thank you.

CHAIRMAN ROBERTI: Any other questions?

Is there any opposition in the audience?

SENATOR CRAVEN: Move Mr. Smith.

CHAIRMAN ROBERTI: Senator Craven move's Mr. Smith's
confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye.

Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Mello Aye.

Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye.

Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye.

Senator Roberti.

CHAIRMAN ROBERTI: Aye.

SECRETARY WEBB: Roberti Aye.

CHAIRMAN ROBERTI: The vote is five to zero;
confirmation's recommended to the Floor.

Congratulations.

1 MR. SMITH: Thank you, Senator.

2 CHAIRMAN ROBERTI: Finally, Mr. Clark E. Wallace,
3 Real Estate Commissioner.

4 Mr. Wallace, we'll ask you what we ask all the
5 Governor's appointees, and that is why you feel qualified to
6 assume this position?

7 MR. WALLACE: Chairman Roberti and Members of the
8 Senate Rules Committee, I'm pleased to be with you today and
9 have an opportunity to help encourage you to confirm my
10 appointment.

11 Background-wise, I was born in the heart of Senator
12 Petris's district, in Oakland, in 1933, into a real estate
13 family. My grandfather immigrated from Salt Lake City in 1913,
14 where he was practicing real estate; came to the state in 1917
15 and went into the real estate business.

16 My father graduated from the University of California
17 in Berkeley in 1922, went into the real estate in 1924. He and
18 Grandpa formed a firm on Grand Avenue in Oakland in 1928.

19 I was born a few years later. Went to the University
20 of California, majored in real estate; graduated there in 1955.
21 And after a three-year stint in the United States Navy, came
22 back into the family real estate firm in Oakland and Contra
23 Costa County.

24 CHAIRMAN ROBERTI: So you seem to have been nurtured
25 on real estate.

26 MR. WALLACE: I was born and raised into a real
27 estate family, Senator. In fact, I was one of those programmed
28

1 kids of the '50s who did what their parents told them. My dad
2 says, "You're going into the real estate business," and I went
3 into the real estate business.

4 Beyond that --

5 CHAIRMAN ROBERTI: My father's a tailor. I don't
6 know how to sew a stitch.

7 [Laughter.]

8 MR. WALLACE: Oh, well, we all do a little stitching
9 in our own way.

10 Beyond that, I was a 33-year licensee, starting in
11 1958 until I tendered my license when the Governor asked me to
12 step into this job last May.

13 I was active in the field of residential sales for a
14 while, but very active in residential development as well as
15 some commercial development in primarily Contra Costa County.

16 I've also been active in the real estate industry.
17 My dad at age 91, and Mom at age 92, are the oldest living past
18 presidents of the California Real Estate Association. I went
19 around with them in those early days and succeeded to the
20 presidency of CAR in 1978-79, and into the presidency of the
21 National Association of Realtors in 1986.

22 I've served on Fanny Mae -- I was Chairman of David
23 Maxwell's Fanny Mae Advisory Board. I've served on as a member
24 of the Board of Directors of World Savings and Loan,
25 headquartered in Oakland, and also Allen Stein, former
26 Secretary of Business, Transportation and Housing, appointed me
27 as one of the founding directors of the nonprofit Bridge Housing
28

1 Group in the San Francisco Bay Area.

2 So, I've had a reasonably active career in addition
3 to my professional real estate activities in the real estate
4 industry itself.

5 As far as the Department of Real Estate is concerned,
6 I have also been an appointee of both Governor Jerry Brown as
7 well as Governor George Deukmejian on the Real Estate Advisory
8 Commission. I served for a number of years for both of them
9 until I had to step down because of the implications of the
10 presidency of the National Association of Realtors.

11 I have had the -- a number of occasions to work with,
12 be appointed by, prior commissioners. I've known nine prior
13 commissioners since back in the late '40s, '50s, so I have a
14 sense, particularly in the '70s and '80s, of what the Department
15 is all about.

16 In the nine months I've been in the job, of course,
17 I've gotten a lot better understanding. By and large, the
18 Department's in good hands. It isn't broke. I doesn't need a
19 lot of messing around with, other than the usual things that we
20 all are suffering from in state government, and that's lack of
21 revenues.

22 Real estate license exams or real estate renewals,
23 particularly for sales associates and subdivision applications,
24 the three primary reasons for revenues in our Department, are
25 all off significantly. So, we are doing some belt tightening.

26 Having said that, morale is good. The people have
27 been cooperative, and because of prior experience both with NAR
28

1 and CAR in strategic long-range planning, in the first six
2 months on the job, with the input of all at the request -- at my
3 request, the 373 employees in the six offices of the Department
4 up and down the state, we have crafted a long-range plan
5 together, which I think will make, in the course of the next
6 three or four years, significant contributions to the betterment
7 of the real estate practitioners and the real estate and
8 consumers over which we have oversight.

9 With that, I feel confident that the market will
10 turnaround by May 25th. I have it on reliable authority, May
11 25th, 1992, and that our revenues will go up again, and we'll be
12 able to get back to work.

13 I'd be happy to answer any questions you might have.

14 CHAIRMAN ROBERTI: Senator Petris.

15 SENATOR PETRIS: I admit to some considerable bias
16 here. I've known Mr. Wallace for years, and we've been good
17 friends. I've admired his work.

18 At the proper time, I'd like to be given the
19 privilege of making the motion.

20 CHAIRMAN ROBERTI: Is there any opposition in the
21 audience?

22 Any further questions?

23 You're going to get off easy, Mr. Wallace.

24 SENATOR CRAVEN: May I?

25 CHAIRMAN ROBERTI: Yes, Senator Craven.

26 SENATOR CRAVEN: When were you President of CAR?

27 MR. WALLACE: In 1978, right following Donald Wiedman
28

1 of your district, Senator, and all of 1979.

2 SENATOR CRAVEN: I think that, frankly, the last time
3 I think I saw you and heard you, you spoke in my home town,
4 which is Oceanside, at a meeting of realtors, I believe.

5 MR. WALLACE: Yes.

6 SENATOR CRAVEN: Do you have any friends in
7 Oceanside?

8 MR. WALLACE: Yes, I do.

9 SENATOR CRAVEN: Is John Steiger one of them? He's a
10 realtor.

11 MR. WALLACE: Warner La Sardi, Claire Burgener.

12 SENATOR CRAVEN: You're messing with the right
13 people.

14 MR. WALLACE: Well, that's why I mentioned them.

15 [Laughter.]

16 SENATOR CRAVEN: Might as well start at the top.
17 I'm happy to feel as Senator Petris does, and
18 certainly he's going to move you, and I offer my
19 congratulations.

20 SENATOR PETRIS: Move the confirmation.

21 CHAIRMAN ROBERTI: Senator Petris moves the
22 confirmation be recommended to the Floor.

23 Secretary will call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye.

27 Senator Mello.
28

1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Mello Aye.

3 Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye.

6 Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Craven Aye.

9 Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 SECRETARY WEBB: Roberti Aye.

12 CHAIRMAN ROBERTI: The vote is five to zero;
13 confirmation is recommended to the Floor.

14 Congratulations.

15 MR. WALLACE: Thank you very much, gentlemen.

16 [Thereupon this portion of the
17 Senate Rules Committee hearing
18 was terminated at approximately
19 2:55 P.M.]

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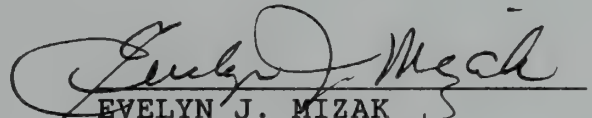
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of March, 1992.


EVELYN J. MIZAK
Shorthand Reporter

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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

HEARING

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 11, 1992
1:50 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARY H. HAYES, Deputy Director
Employment Development Department

ANITA R. MACKENZIE, Deputy Director
Employment Development Department

JAMES G. PATTILLO, Deputy Director
Employment Development Department

THOMAS S. SAYLES, Commissioner of Corporations

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
Deputy Directors of the Employment Development Department	1
MARY H. HAYES, Deputy Director Marketing Services Employment Development Department	1
Background and Qualifications	1
Responsibilities	2
ANITA R. MACKENZIE, Deputy Director Communications Employment Development Department	2
Background and Qualifications	3
Dissemination of Information	3
JAMES G. PATTILLO, Deputy Director and General Counsel Legal Office Employment Development Department	5
Duties and Responsibilities	5
Background and Qualifications	5
Questions by SENATOR PETRIS re:	
Participation in Mass Layoff Statistics Program	7
Statistical Division of Labor Market Information Division	7
Legislation which Made Information Unpublishable under Sections 1094 and 1095 of Unemployment Insurance Code	8
Rationale for Legislation	8
Federal WARN Act	10
Publicly Stated Reasons for Companies Leaving State Versus Real Reasons	12

1		
2	Preliminary Notice of Closures	13
3	Role of EDD in Alleged Mass Exodus	
4	from California	14
5	Verification or Confirmation of	
6	Statistics	14
7	No Tracking of Reasons for Leaving	15
8	Source of Information	15
9	Need to Have Statistical Information	
10	on Reasons Companies are Leaving State	16
11	Council on Competitiveness	17
12	Contradictory Information on	
13	Estimates of Job Losses	17
14	EDD Information Based on Department	
15	of Labor Statistics	18
16	Extension of Farmworker Unemployment	
17	Benefits after Freeze	18
18	Refusal to Extend to Other Worker-	
19	Affected Categories	19
20	Establishment of Farmworkers Services	
21	Coordinating Council	19
22	Effect of IRCA on Hiring Practices in	
23	California	20
24	Program for Hiring Disabled Persons	20
25	Delays in Payments of Unemployment	
26	Benefits	21
27	Department's Position on Paying	
28	Interest on Delayed Claims	21
29	Reasons for Delays	22
30	Backlog of Cases at Unemployment	
31	Insurance Appeals Board	22
32	Business Climate Problem	23
33	Questions by SENATOR MELLO re:	
34	True Unemployment Rate in California	24

1		
2	Counting of Those No Longer Seeking	
3	Benefits	25
4	Percentage of Working Homeless	26
5	Plant Closures which Deny Employees	
6	Benefit Eligibility	26
7	Payments in Lieu of Notice	27
8	Percentage of Appeals Caused by EDD	28
9	Denial of Unemployment Benefits Extension	
10	to Commercial Fishermen after Freeze	29
11	Interpreation of Law on Eligibility	29
12	Large Number of Displaced Workers Due	
13	to Closure of Military Bases in State	30
14	Pursuit of Job Partnership Act Funds	31
15	Questions by SENATOR PETRIS re:	
16	Defense Conversion Adjustment Program	32
17	Ability of Individual Entities to	
18	Get Funding	32
19	EDD's Offer of Technical	
20	Assistance in Filing Applications	33
21	Motion to Confirm MS. HAYES	34
22	Committee Action	35
23	Motion to Confirm MS. MACKENZIE	35
24	Committee Action	36
25	Motion to Confirm MR. PATTILLO	36
26	Committee Action	37
27	THOMAS S. SAYLES	
28	Commissioner of Corporations	37
	Background and Qualifications	37
	Motion to Confirm	38
	Committee Action	38

1		
2	Motion to Hold Roll Open	38
3	Termination of Proceedings	39
4	Certificate of Reporter	40
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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--oo0oo--

CHAIRMAN ROBERTI: Governor's appointees appearing today. We have three Deputy Directors of the Employment Development Department. In an attempt to save time, why don't we have all three -- Mary Hayes, Anita MacKenzie, and James Pattillo -- please come forward, and please indicate why you feel you're qualified to assume this position.

Maybe we'll ask questions of all three of you at the same time. We'll start with Ms. Hayes.

MS. HAYES: Mr. Chairman, Members, I am Mary Hayes. I'm here today to ask for confirmation as Deputy Director of Marketing Services for the Employment Development Department.

First I will tell you about my background and qualifications, and then follow with a description of the position of Deputy Director of Marketing Services, and conclude with a brief summary of what I have accomplished in the past nine months.

I have a degree in political science from California State University Sacramento. For ten years, I was the primary owner and chief executive officer of a small profitable corporation. I was responsible for all the fiscal and operational aspects of three retail stores, rental property, a consulting practice, and approximately 20 employees.

I am a certified public accountant with three years' experience in public accounting. My experience includes: auditing, accounting, tax, and financial analysis.

1 The Deputy Director of Marketing Service for the
2 Employment Development Department, EDD, is responsible for the
3 development and implementation of a statewide marketing plan
4 designed to focus promotional activities on EDD's programs and
5 services which encourage the economic development of California.
6 The marketing vision includes: identifying customer needs,
7 expectations and perceptions; serving as a resource to support
8 EDD programs and services in meeting or exceeding customer
9 expectations; and clearly positioning EDD as an effective
10 business and employment partner.

11 I have been in the position of Deputy Director of
12 Marketing Services for the past nine months. During that time,
13 I have worked with the task force to develop the Department-
14 wide strategic marketing plan. The plan has been approved, and
15 we are in the process of implementing it.

16 We have determined that by focusing our activities
17 and resources on the employer community, we can best increase
18 public awareness of EDD's programs and services. My experience
19 as both an employer and a CPA working with employers has allowed
20 me to bring a valuable perspective to my job.

21 I'd be happy to answer any questions you have for me.

22 CHAIRMAN ROBERTI: Any questions of Ms. Hayes? Not
23 right now.

24 Next we'll go to Ms. MacKenzie.

25 MS. MACKENZIE: Good afternoon. I'm Anita MacKenzie.
26 My role as Deputy Director of Communications at EDD requires
27 experience in writing, research, media relations, public
28

1 relations, and dissemination of information. It also requires
2 knowledge of internal and external audiences, and, of course,
3 knowledge of the subject areas we deal with at EDD.
4

5 My background, which I would like to briefly describe
6 for you, offers experience in each of these areas. I have
7 experience working in the media as a reporter, writer, producer
8 for a local, all-news radio station. The other private sector
9 experience I have which qualifies me is a community relations
10 position I held at Mercy San Juan Hospital in Carmichael. There
11 I was in charge of production of in-house publications,
12 everything from developing concepts, to writing the brochures
13 and announcements or newsletters, to completing the actual
14 graphic layout and design.

15 My public sector work began about ten years ago as a
16 Senate employee when I went to work as press secretary for a
17 Senator. I also worked more than five years for the Assembly
18 Republican Caucus as media relations specialist, producing all
19 of the radio news releases for the Members.

20 Prior to EDD, I most recently served in the previous
21 Administration as an assistant press secretary for the Governor.

22 I believe that EDD's client groups -- claimants, the
23 public, and employers -- are being served well through the
24 Communications Office. We are working hard to make sure that
25 each of these groups has all of the information that they need,
26 and that they receive it in a timely and accurate way.

27 More than 100 news releases have been sent out since
28 I started as Deputy Director of Communications. We've also held

1 several news conferences, announcing extending benefits for
2 unemployment insurance claimants, announcing Job Training
3 Partnership Act grants for the re-training of displaced workers,
4 and for the creation of public service employment jobs. Many of
5 these events have been coordinated with the offices of local
6 elected officials and the private industry councils in the area.
7 We have had effective publicity campaigns to announce help for
8 the unemployed in disaster ridden areas, those areas affected by
9 floods, freeze, and fire.

10 The Communications Office is also involved in
11 publicity campaigns to make the public aware of EDD's services.
12 We highlight Disability Insurance Awareness Week, Hire the Older
13 Worker Week, Hire a Veteran Week, and offer media campaigns for
14 summer youth employment programs and employment of persons with
15 disabilities.

16 I am committed to ensuring that those who need the
17 services of EDD are aware that those services are available to
18 them.

19 With that, I would like to offer to answer any
20 questions that you might have.

21 SENATOR CRAVEN: Very well, thank you very much,
22 Ms. MacKenzie.

23 Do you want to ask your questions now, Senator
24 Petris, or do you want to wait until we hear all three?

25 SENATOR PETRIS: We started to go for all three
26 first.

27 SENATOR CRAVEN: Fine.
28

1 Next, please, this is James Pattillo.

2 MR. PATTILLO: Mr. Chairman and Members of the
3 Committee, my name is James Pattillo. As you know, I've been
4 appointed as Deputy Director and General Counsel of the
5 Employment Development Department.

6 The Legal Office of the Employment Development
7 Department, which I supervise, has a staff of 19 attorneys, 4
8 paralegals, and 9 support personnel. The duties of that office
9 include: giving legal advice to the Director and the staff of
10 the Department; representation of the Department in
11 administrative hearings; coordination with the Attorney
12 General's Office regarding court proceedings involving the
13 Department; drafting and review of contracts; drafting analyses
14 and advice regarding legislation and regulations; and generally
15 rendering legal advice as required by the Department.

16 My qualifications for the position to which I have
17 been appointed are as follows. I received my bachelor's and law
18 degrees from Stanford University: my bachelor's degree in 1964;
19 the law degree in 1967. I'm a member of the California State
20 Bar, having been admitted to practice in 1967. I've been
21 engaged full time in the practice of law for over 24 years. I
22 practiced law in Salt Lake City, Utah, from 1967 until 1971, and
23 in Santa Barbara, California, from 1971 until June of last year
24 when I was appointed to the position at EDD.

25 My private practice was a general business practice,
26 with emphasis on corporate and partnership matters and business
27 litigation.
28

1 Besides the California and Utah State Bars, I'm also
2 admitted to the United States District Court for the District of
3 Utah, the United States District Court for the Central District
4 of California, the United States Court of Appeals for the Ninth
5 Circuit, the United States Court of Appeals for the Tenth
6 Circuit, the United States Court of Claims, the United States
7 Tax Court, and the United States Supreme Court.

8 My practice has given me experience in dealing with
9 legal issues of varying types and in various contexts,
10 including: document drafting and analysis; interpretation and
11 analysis of statutes, administrative materials, and court
12 decisions; representation of clients at administrative hearings;
13 litigation from commencement through trial and appeal in both
14 state and federal courts; advice to clients on options and
15 possible courses of action based on analysis of fact situations
16 and applicable statutes, administrative materials, and case law.

17 During my practice, I acted as managing partner of
18 two different law firms, and thus have experience with the same
19 types of personnel, administrative and operational decisions, as
20 are required in the administration of the EDD Legal Office.

21 Rather than boring you with further details, I will
22 stop this summary, unless there are any questions.

23 SENATOR CRAVEN: Thank you very much, sir.

24 We have three members of the same organization, each
25 with their own particular speciality, so you can talk about
26 matters fiscal, or communication, or law, I suppose, and then
27 beyond that, perhaps. Or some good stories about Tom Hayes.
28

[Laughter.]

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: Thank you, Mr. Chairman.

Let's start with Ms. Hayes. I'm told that we're the only state in the Union that doesn't take part in the mass layoff statistics program. I wonder why that's so, and if that's not in your shop, maybe one of the others can answer.

MS. HAYES: I'm sorry, Senator Petris. That is something that's not in my shop.

SENATOR PETRIS: Okay, whose shop is it?

MR. PATTILLO: Senator Petris, I'm not sure whose shop it is, but that's a question that I've dealt with, so perhaps I can answer it.

Statistics on plant closings are gathered by the Labor Market Information Division of EDD. They are published in summary form. They are not published with regard to "John Doe is going to close John Doe's Garment Factory next week."

SENATOR PETRIS: Or last week.

MR. PATTILLO: Or last week. Well, it's supposed to happen in advance.

The employer who is going to close is required to give notice that he intends to close a plant both to the local governmental agency where his plant is located and to Labor Market Information of our Department.

The local government agency makes that information publicly available in an individual form: Joe's Garment Factory is going to close.

1 We take it into our Statistical Division, make a
2 statistic out of it, and say: 15 plants closed last year.

3 The Director prior to the current Director of this
4 Department, Mr. Kaye Kiddoo, had legislation introduced and
5 passed which made the information gathered by the Labor Market
6 Information Division technically information collected by the
7 Director in the performance of his duties. Once that happened,
8 it fell under Sections 1094 and 1095 of the Unemployment
9 Insurance Code, which say that the Director cannot publish any
10 information which he obtains in the performance of his duties
11 with certain very limited exceptions.

12 SENATOR PETRIS: What if he just reads it in the
13 newspaper? If he got the information from the newspaper, so
14 then he adds it to the statistical compilation, is that still
15 under those two code sections?

16 MR. PATTILLO: If he read it in the newspaper, I
17 don't think it would be information collected by the Director in
18 the administration of his duties.

19 SENATOR PETRIS: What was the rationale for having
20 those two code sections enacted? Why did we want to do this?

21 MR. PATTILLO: Those two code sections have been in
22 the code since the very beginning of the unemployment insurance
23 program.

24 SENATOR PETRIS: How long ago?

25 MR. PATTILLO: Since 1932 or '3.

26 SENATOR PETRIS: I had the impression you referred to
27 some recent legislation.
28

1 MR. PATTILLO: The recent legislation hooked the
2 plants closures statistics into 1094 and 1095; 1094 and '5 have
3 been there since forever.

4 SENATOR PETRIS: They're probably very narrow, aren't
5 they? Probably deal with individual names of employees?

6 MR. PATTILLO: Names, addresses, Social Security
7 numbers, details of former employment, amounts of claims -- all
8 the information the Department collects.

9 SENATOR PETRIS: This latest hook-up seems to be
10 substantially different. It's more on a massive basis -- number
11 of plants or number of employees -- and nothing further; no
12 names or Social Security numbers, or anything like that.

13 Why should that be in the same category? I'm not
14 arguing with you. I'm trying to find out why we did it.

15 MR. PATTILLO: I'm not certain, Senator. I was not
16 with the Department under the former Director when this was
17 done.

18 I am told that his concern was that the law requires
19 plant owners to publish the notice if they're going to close 60
20 days before they do it, that some plants might publish the
21 notice -- like the recent instance with General Motors, where
22 they were going to close either a plant in Arlington, Texas, or
23 the Willow Run plant in Detroit. But then there was confusion
24 about which one would close, and they finally closed Willow Run.

25 Under the law, they would have been required to
26 publish the notice as to both plants, because they intended to
27 close one or the other.
28

1 SENATOR PETRIS: Is that a federal law?

2 MR. PATTILLO: That's a federal law, and then they
3 would only have closed one, but they would have published the
4 notice saying: We may close both.
5

6 And Director Kiddoo's concern was that in situations
7 of that kind, if we were to give publicity to the information
8 regarding several possible plants that might close, where really
9 only one was going to close, it could create a false impression
10 of the economy being in worse shape than it is, the employer
11 being in worse shape than it might be, and that it would be
12 better if we just let the local agencies publish anything they
13 wanted to publish, and we stuck to putting out the statistics
14 that we typically put out.

15 SENATOR PETRIS: We don't have any requirement like
16 that in state law on notice on plant closings?

17 MR. PATTILLO: No, Senator. The WARN Act is federal
18 law.

19 SENATOR PETRIS: That covers it? I had similar
20 legislation three or four years ago, which was defeated or
21 vetoed, I forget which, but we didn't make it. The idea being
22 to give notice to people and make adjustments because of the
23 impact. If you get a great, big plant in a small town, it wipes
24 out employment for the whole town and has a community-wide
25 impact. And the purpose was to provide as much information as
26 possible. That is being done under the federal statute.

27 Do you also make a report to some federal agency, or
28 just local?

1 MR. PATTILLO: I'm not certain, but I believe that
2 the WARN Act only requires notice to the local governmental
3 agency and to the state employment security agency, which is
4 EDD, but not to the Department of Labor. I may not be correct
5 about that.

6 SENATOR PETRIS: Now, the information that other
7 people get and disseminate would have to be after the fact, I
8 gather. You know, the business climate survey done recently by
9 the L.A. Chamber on how many businesses left the state, that
10 wouldn't involve a problem with that statute because it's not in
11 the preliminary notice category; is that right?

12 MR. PATTILLO: I believe that's correct, Senator.

13 SENATOR PETRIS: I still don't know whether there's
14 any difference between what you described and the mass layoff
15 statistics program. We're not doing that as a part of that
16 national program. We're doing it under some other statute,
17 apparently; is that right?

18 MR. PATTILLO: I'm not certain of that. I know we
19 received in inquiry from one newspaper asking for statistics
20 under the WARN Act. The worker effected -- I forget what the
21 acronym stands for, but it's the advance labor layoff provision
22 of the federal law.

23 I looked into it. What I found was what I've told
24 you. I'm not aware of a problem involving mass layoff
25 statistics, other than that one.

26 SENATOR PETRIS: Well, I'm told that, according to
27 our staff, all the other states take part in that federal
28

1 program, but we don't.

2 Is that because we do it on our own, or we're not
3 doing it at all? I don't what's involved in the layoff
4 statistics program except that it has to do with compiling the
5 data on mass layoffs and plant closings and the reasons.

6 I've found in the past that the reasons stated
7 publicly for closing down of a plant, or moving out of the
8 state, don't always comport with the truth. Sometimes companies
9 who had some difficulties locally with the city council on
10 zoning, or with labor, or somebody, will take a parting shot,
11 and their headquarters in Tennessee has made a decision to
12 consolidate, and they're pulling in people back to the
13 headquarters. Has nothing to do with local conditions, but the
14 public statement made by the local president of the company, or
15 manager, says: "We're leaving because we've had too many zoning
16 fights with the city," or, "We're leaving because labor costs
17 are too high here. The unions are giving us a bad time."

18 Then you probe into it, you find neither one of those
19 had anything to do with the decision to leave. It wasn't made
20 by the local branch manager; it was made by somebody back in
21 their headquarters.

22 I'm wondering if this statute is intended to flush
23 out the true reasons so that we can have a better knowledge, you
24 know, store of knowledge as to why certain things happen in our
25 business world. But I'm groping, because I don't know what that
26 statute provides for.

27 MR. PATTILLO: We may be talking past one another.
28

1 If there is a mass layoff statistic statute, I'm not
2 aware of it. The statute I am aware of is the WARN Act, the
3 federal law regarding the 60-day advance notice of plant
4 closure.

5 I have been told by the reporter who called me that
6 all other states not only compile that information statistically
7 but also with individual employer names, and make it available
8 to the press. The reporter was most indignant that we did not
9 compile that information other than statistically in California.
10 I told him the same thing I've told you as to why we don't.

11 SENATOR PETRIS: Is this a preliminary notice
12 juncture that you're talking about?

13 MR. PATTILLO: Yes, sir.

14 SENATOR PETRIS: So the reporter wants to know in
15 advance before it happens.

16 MR. PATTILLO: And he wanted information on not just
17 how many plants have left California, or have given the WARN Act
18 notice, but who, which employers, where were they located, what
19 communities, how many employees.

20 We have information on how many employers and how
21 many employees. We don't have the information, or we don't --
22 we cannot publicly give the information on what employer, what
23 town.

24 SENATOR PETRIS: That's prohibited by the statute,
25 but the federal statute?

26 MR. PATTILLO: No, it's prohibited by the state
27 statute which picks up these long-standing prohibitions in 1094
28

1 and 1095 --

2 SENATOR PETRIS: And adds these other two.

3 But since you weren't here at the time, you can't
4 tell us why we did that. There must have been some good reason.
5 I don't know what that would be.

6 MR. PATTILLO: I assume there was one, but I can't
7 tell you what it was.

8 SENATOR PETRIS: We'll have to do some research on
9 that, you and I both.

10 MR. PATTILLO: Yes, sir.

11 SENATOR PETRIS: Related to that is the business
12 climate controversy that's been going on with the L.A. Chamber
13 report and others who contend there's a massive exodus from
14 California.

15 Is there any role being played by EDD in that, one
16 way or the other, either being a resource agency to provide
17 information on what's actually happening?

18 The reason I ask that, there are contradictory
19 reports. The L.A. Chamber makes certain allegations, and
20 there's another study done in Palo Alto that blows it out of the
21 water, or at least contradicts it.

22 I wonder if people come to you for verification,
23 confirmation, of statistics that are thrown around out there,
24 which may or may not be reliable?

25 MS. MACKENZIE: We do have a statistics program
26 through our Labor Market Information Division.

27 We offer the statistics. Other agencies and
28

1 individual entities -- local governments -- take our statistics
2 and do numerous things with them, and make them fit into
3 whatever form they want them to fit.
4

5 We do not track as a state agency, and I do not
6 believe that any state agency does track the reasons that
7 businesses are leaving the state. It is something that we are
8 looking at, and it is of great concern to us, the number of
9 businesses that are leaving the state, and we are -- but our
10 role right now is simply to take the information the employers
11 as they report to us the number of employees they have, and at
12 the time they leave, they would do an exit report that simply
13 would include statistical information.

14 SENATOR PETRIS: It wouldn't include the reasons for
15 leaving?

16 MS. MACKENZIE: No.

17 SENATOR PETRIS: Do you have authority to find that
18 out under the present laws or regulations?

19 MS. MACKENZIE: I don't know if we have the
20 authority.

21 SENATOR PETRIS: But when you track them, you ask
22 certain questions, don't you? How do you get the information on
23 the number of employees?

24 MS. MACKENZIE: Through the tax form returns, the 202
25 Form that is submitted by employers on a quarterly basis to the
26 Employment Development Department.

27 SENATOR PETRIS: Well, it seems to me there's a gap
28 here. I'm trying to find out how we can close it.

1 There is a lot of concern about businesses leaving
2 the state. I personally am not convinced that it's anywhere
3 near the scope, the dimension, that the critics are claiming.
4

5 I know the Governor's sensitive to it. He's vetoed a
6 lot of bills on the ground that it would drive business out of
7 the state; it might be a tax, it might be a new regulation, you
8 know.

9 On the other hand, I've never heard him complain
10 about companies who leave here and go to Mexico so that they can
11 pay 85 cents an hour instead of \$15, or \$16, or \$17. Never a
12 complaint on that.

13 It seems to me if we had a statistical flow -- a flow
14 of statistical information that let everybody know why Company A
15 is leaving for real, it would, first of all, help us assess the
16 situation; and second, clear up the confusion that's caused by
17 contradictory reports from different sources.

18 Do you see what I mean?

19 I don't know whether this would take a statute or
20 not. It seems to me that could be done within the policy. If
21 you have a form, exit -- what did you call it? Exit-something.

22 MS. MACKENZIE: There are -- the tax forms.

23 SENATOR PETRIS: The final tax? Yes, maybe we could
24 add a question on why don't you love us anymore? How come
25 you're leaving California?

26 You may get the truth, you may not, but it's a start.
27 And I thought just from the surface here that a mass layoff
28 thing might be intended in part to include that information. I

1 guess it doesn't.

2 What about the new Council on Competitiveness that
3 the Governor has formed? Is EDD playing a role in that?

4 MS. MACKENZIE: Yes, the Director sits on a couple of
5 the subcommittees of the Council on Competitiveness and is very
6 active and is very concerned about business retention in the
7 State of California for the sake of jobs.

8 SENATOR PETRIS: Do you know when their first report
9 is due?

10 MS. MACKENZIE: Shortly; April, I believe.

11 SENATOR PETRIS: This Competitiveness Council has to
12 do with our competition no matter where they are, I assume? It
13 could be other states or foreign companies as well, foreign
14 markets? It isn't limited just to neighboring states, why
15 people move to Nevada or why they go to Mexico. It's much more
16 broad than that; isn't it?

17 MS. MACKENZIE: That's my understanding, why
18 businesses -- what we can do to keep business in California,
19 period.

20 SENATOR PETRIS: You handle the flow of -- you're
21 the communications person, so I guess if anybody knows it, you
22 would, unless it's not part of the stream of PR releases.

23 One of the things that troubles us from time to time
24 is another thing of estimates on job losses. We seem to get
25 contradictory information from different sources. Some of them
26 are state sources; others are private.

27 Can you comment on that at all?
28

1 MS. MACKENZIE: I can tell you that we contract with
2 the Department of Labor to gather statistics from the Department
3 of Labor, and we follow, generally speaking, Department of Labor
4 guidelines for tracking such things as unemployment rates and
5 job loss.

6 SENATOR PETRIS: Department of Labor?

7 MS. MACKENZIE: Uh-huh.

8 SENATOR PETRIS: Anyone else? That's it?

9 MS. MACKENZIE: Well, the Bureau of Labor Statistics
10 within the Department of Labor.

11 SENATOR PETRIS: That's within. So there wouldn't be
12 conflicting reports coming out of that one agency, I don't
13 imagine.

14 MS. MACKENZIE: No.

15 SENATOR PETRIS: Are there any other sources of
16 public agencies that handle this information or generate it?

17 MS. MACKENZIE: Not to my knowledge. Several
18 agencies take our statistics and then do what they will with
19 them for analytical reasons and for planning reasons.

20 SENATOR PETRIS: Sometime ago the question of the
21 problem of the farmworkers came up. We were all very concerned.
22 They had a tough enough time in normal years, but remember the
23 freeze?

24 MS. MACKENZIE: Right.

25 SENATOR PETRIS: Happily, a lot of them are now back
26 at work and doing much better

27 At that time, the EDD recommended extension of
28

1 unemployment benefits for them, but when other categories came
2 up, they didn't make that recommendation.

3 Was that a fiscal decision?

4 MS. MACKENZIE: I don't know it -- what exactly
5 you're referring to.

6 There was a need shown during the freeze for there to
7 be extended benefits, and based on need, the decision was made
8 to --

9 SENATOR PETRIS: I don't recall the categories, but
10 there were also other categories, groups of workers afflicted in
11 some other way who had need for an extension, but that was
12 denied.

13 You don't recall that?

14 MS. MACKENZIE: I don't recall.

15 We have done several things for farmworkers and the
16 farmworker community. During the time following the freeze, the
17 Public Service Employment Program was established to create
18 public sector jobs, to help tide people over until the new crop
19 came in. The new crop came in about November; oranges were
20 back; citrus growers were hiring again --

21 SENATOR PETRIS: That was the primary area, yes.

22 MS. MACKENZIE: Right, and we also have been
23 instrumental in the establishment of the Farmworkers Services
24 Coordinating Council, which held its first meeting just a couple
25 of weeks ago, and that includes members from several departments
26 that deal with farmworker issues. And it will be meeting on a
27 regular basis in different areas to assess the different needs
28

1 of farmworkers and the farmworker community.

2 SENATOR PETRIS: What's that called? Is that a
3 council of some kind?

4 MS. MACKENZIE: The Farmworkers Services Coordinating
5 Council. It's through the Health and Welfare Agency.

6 SENATOR PETRIS: Now, speaking of farmworkers, what
7 impact has the recent federal reform -- remember the Immigration
8 Reform and Control Act -- had on hiring practices in California?
9 You know, the employer's required to verify within three days
10 the eligibility of each worker to hold a job in California.
11 Have you had enough experience yet to tell us how that's working
12 out?

13 MS. MACKENZIE: I know that the Labor Market
14 Information Division tracks such things and does surveys of
15 employers to try to determine the impact of IRCA. I am not sure
16 that anything conclusive has yet been determined.

17 SENATOR PETRIS: Do you have any program in the
18 Department for hiring of the disabled?

19 MS. MACKENZIE: We do. We house the employment --
20 the Committee for Employment of Disabled Persons, and we work
21 very closely with them in establishing policy, working with the
22 employer community to make certain that employers adhere to
23 legislation like the Americans with Disabilities Act, and those
24 kinds of federal regulations.

25 SENATOR PETRIS: We've had similar legislation in
26 California for quite a while.

27 Mr. Pattillo, I'm curious about delayed benefit
28

1 payments in the workers comp. system -- not workers comp; not
2 injury, but unemployment benefit payments.

3 A lot of times, those payments are delayed for
4 unemployment or disability. It could be from maybe having the
5 application denied originally, and then a subsequent reversal,
6 and then it relates back to the original period after a lot of
7 time has passed. It could be an error in some clerk's file,
8 bureaucratic delays, et cetera.

9 Apparently, there are so many of them in recent
10 years, that the employees have been asking for interest payments
11 on that claim when it's finally paid.

12 Does EDD have an official position on paying
13 interest? Do they recommend the payment of interest or not?

14 MR. PATTILLO: I believe there was a case which
15 ordered us to pay interest on particular -- on a particular
16 group of claims that were involved in that case.

17 I believe that the Department has recommended to the
18 Health and Welfare Agency that we consider what we should do
19 about interest, because it doesn't just affect us. It affects
20 welfare, and it affects work comp., and other agencies who pay
21 benefits that may be delayed. And we didn't want to make a
22 unilateral decision that could then be used as a precedent
23 against other departments without involving them in the
24 discussion and letting them have something to say about it.

25 So, we have paid interest in the case where the court
26 ordered us to. We think we probably should pay interest in --
27 in cases in the future, but we've referred the matter to the
28

1 Health and Welfare Agency for a decision as to -- for a policy
2 decision from them or from higher up as to what we should do.

3 SENATOR PETRIS: You don't have authority in EDD to
4 make that decision?

5 MR. PATTILLO: I suppose technically we have
6 authority to decide what are we as a Department going to do, but
7 our concern was that that decision affects not only our
8 Department, but also other departments throughout the state.

9 SENATOR PETRIS: You also have a variety of reasons,
10 I suppose. Some reasons, you'd pay interest, and others you
11 wouldn't.

12 MR. PATTILLO: Well, the largest source of delay is
13 not actually within EDD. Within EDD, the delays might be a
14 matter of a week, ten days, two weeks.

15 The delays now are coming from the fact that we deny
16 benefits, or we don't -- or we say we'll only pay them at a
17 certain level. The applicant doesn't like our decision. He or
18 she appeals to the Unemployment Insurance Appeals Board. They
19 have a backlog of 60,000 cases sitting over there. And they are
20 an independent judicial body outside our Department, not under
21 our jurisdiction.

22 So, they are hiring new administrative law judges,
23 and putting in a new computer system, doing everything they can
24 to try to get back on top of their backlog, but in the meantime,
25 the backlog exists. The cases are delayed, and at least -- I'm
26 passing the buck here, but there's nothing that we at EDD can do
27 about that.
28

1 SENATOR PETRIS: That's okay. I'm just trying to
2 find out.

3 Sometimes interest is an additional inducement for
4 the payer to move more quickly. Maybe we ought to make it more
5 formal, a regulation or statute, to the extent you can trace the
6 principle cause of the delay. Because it's normally beyond the
7 control of the applicant himself or herself. They're just
8 waiting for this process to keep moving.

9 MR. PATTILLO: I know we'd certainly be happy if
10 you'd put it in a statute that the Unemployment Insurance
11 Appeals Board should pay the interest.

12 SENATOR PETRIS: Well, it might reduce that 60,000
13 somewhat.

14 Just one more question of Ms. Hayes on the business
15 climate problem. Do you have any comments with respect to how
16 EDD could help in that situation?

17 MS. HAYES: Right now we're looking at working with
18 advisory groups of the employer community and getting their
19 feedback on how EDD can better serve them, specifically in the
20 area of looking at providing them with job-ready applicants for
21 jobs when they do become available, and finding out what jobs
22 are -- there are some jobs out there, and it's matching the
23 applicants with the job.

24 SENATOR PETRIS: That's one of your basic functions;
25 isn't it?

26 MS. HAYES: Yes, uh-huh.

27 SENATOR PETRIS: Beyond that, do you learn anything
28

1 in dealing with the employers that might help counsel them on
2 ways to be more effective in the things they do, maybe the
3 paperwork or something? You probably wouldn't get that much
4 information.

5 MS. HAYES: Not that I can think of a specific
6 example.

7 SENATOR PETRIS: Thank you very much.

8 SENATOR CRAVEN: Any others? Senator Mello.

9 SENATOR MELLO: Just a couple of follow-up questions
10 from what Senator Petris was asking.

11 One of them has to do with -- Ms. MacKenzie perhaps
12 can answer this. When the amount of employment was out in
13 California, it's now estimated at 8.9 percent.

14 MS. MACKENZIE: It's 8.7, Senator.

15 SENATOR MELLO: Well, hopefully it went down.

16 But the point I'm trying to make, I think this total
17 is misleading as to the number of people out of work, because it
18 no longer counts those that have exhausted their benefits.
19 Those that are out of the system but still unemployed because of
20 limitations placed on the benefits.

21 Is that correct?

22 MS. MACKENZIE: I don't believe so, sir. I believe
23 that the unemployment --

24 SENATOR MELLO: Let me ask you this. Do you count
25 them after they have exhausted their benefits?

26 MS. MACKENZIE: You are counted as unemployed if you
27 are actively seeking work.
28

1 SENATOR MELLO: How do you know they're seeking work
2 if they're no longer coming into your office for --

3 MS. MACKENZIE: Through a survey done by the federal
4 government, the Bureau of Labor Statistics.

5 SENATOR MELLO: So, is the 8.7 the total number of
6 unemployed in California, or are there more?

7 MS. MACKENZIE: It is an estimate of the number of
8 unemployed. There is a 90 percent accuracy rate -- or, 90
9 percent confidence rate that -- it falls within a range. I
10 believe this month it's 7.7 to 9.0. I didn't bring that with
11 me.

12 SENATOR MELLO: I've read articles that I've been
13 following because I'm very concerned. In my area, one of my
14 counties had 18.3 percent, San Benito County, before a plant
15 closure came in. I don't know what they're up to now.

16 But I believe, based on information that is stated by
17 the EDD Office does not count those that are no longer seeking
18 benefits within the system. So therefore, in my opinion, the
19 unemployment rate ranges higher to some degree than the stated
20 rate by your Department.

21 MS. MACKENZIE: The Department of Labor conducts a
22 current population survey, which includes 4300 households in the
23 State of California. And upon that survey and some other
24 factors, the Department of Labor establishes what the state's
25 unemployment rate is.

26 SENATOR MELLO: When you say households, are you
27 counting the homeless?
28

1 MS. MACKENZIE: I do not believe so.

2 SENATOR MELLO: Do you know what percentage of the
3 homeless are working?
4

5 MS. MACKENZIE: No, sir, I don't.

6 SENATOR MELLO: I've read it's about 60 percent.

7 So, I think we're worse off than -- even though
8 you've lowered it by two-tenths of a percent, I think there's
9 more unemployment here in California today than is stated by
10 federal and state agencies.

11 Mr. Pattillo, I'd like to ask you about -- Senator
12 Petris was asking you about the notification process for plant
13 closures, and there's several areas. One is with the severance
14 pay, but also, isn't there another way that plants can issue a
15 notice in lieu of and lay off employees without any benefits, or
16 any 60-day notification?

17 MR. PATTILLO: I believe Senator Petris's question
18 went to the WARN Act, which requires -- it's a federal statute
19 that requires an employer to give advance notice 60 days prior
20 to the closing of a plant of a certain size.

21 That notice doesn't say anything about, okay, you're
22 going to close your plant. You're going to lay off 500 people.
23 Are you going to give them severance pay? Are you going to pay
24 them their accumulated vacation, their sick leave? It says
25 nothing about benefits. All it says is, you have to give the
26 notice and tell people this is going to happen.

27 And then, the matter of what benefits are paid is a
28 matter, perhaps, a labor agreement, or private contract between

1 the company closing the plant and the employees.

2 SENATOR MELLO: I had a bill in this regard last year
3 that the CMA and other business interests opposed, and I believe
4 your Department did also.

5 What I was trying to establish, because this came
6 about in Salinas, where Simplex Foods closed two plants. They
7 gave this notice in lieu of, and made a severance pay type of
8 pay to the employees, but that was counted so they couldn't be
9 eligible then for unemployment insurance.

10 MR. PATTILLO: There are horribly complicated
11 provisions governing when you are laid off and you get a payment
12 from your employer. If it's called one thing, we treat it as if
13 you're not unemployed. Yet because it's a payment -- if you're
14 given, say, two weeks' pay in lieu of notice -- well, you're not
15 unemployed until the two weeks run out because you're still
16 being paid for those two weeks.

17 On the other hand, if you're laid off and given a
18 severance payment of two weeks' money, you're laid off right
19 now, and you can go down and file for benefits.

20 SENATOR MELLO: This was notice in lieu of, so they
21 gave them one weeks' pay, or something like that, so then when
22 they went in to get their unemployment insurance, well, they
23 were just not plain eligible. I don't know how that --

24 MR. PATTILLO: It sounds like it was a payment in
25 lieu of notice.

26 SENATOR MELLO: I'll dig up a copy of the bill, but
27 Senator Petris is right. This area needs some work in order to
28

1 protect the workers who are being laid off right now during this
2 recession. Many are losing their jobs, and there are just not
3 benefits there to provide help for them.

4 The other thing you mentioned, backlog of 60,000
5 before the Appeals Board, which is out of your jurisdiction.
6 But every single one of those appeals is caused by the EDD
7 department, who enforce the regulations in such a way that
8 people become denied of their benefits and they have to file an
9 appeal.

10 I'd like to know what percentage, you know, just out
11 of your enforcement, administration by EDD, accounts --
12 contributes a lot to these appeals? What percentage of these
13 appeals are decided in favor of the appellants?

14 MR. PATTILLO: I don't have an exact number for you,
15 Senator. I believe it's a relatively small percentage. Those
16 are cases in which we've said we can't pay you benefits because
17 you didn't work at all. You have no wages in your base period.
18 We can't pay you wages at the level you want because we're
19 complying with federal law. The federal law says if you have
20 wages at a certain level, you get benefits at a certain level.
21 And the employee comes in and says, "I don't like that. I want
22 the higher benefits."

23 Basically, in every one of those cases, the
24 Department, in all good faith and in all seriousness, has made
25 the best call we can on the facts, and we've said we can't pay
26 this applicant at all, or we can't pay them the amount they want
27 because the law doesn't qualify them to be paid.
28

1 Now, obviously, those applicants all disagree, and
2 that's why there's an appeal. But it's not as though we're
3 sitting over there saying, you know, "How many applicants can we
4 throw out in the street today and not pay."

5 SENATOR MELLO: I'm not suggesting that. You're
6 saying the law is here, but many times the interpretation of the
7 law differs between different people.

8 Like you may recall -- I guess you did not recall,
9 during the freeze period, also, the commercial fishermen in our
10 area had no fishing, and they went to get unemployment benefits.
11 And they went through, oh, lost their boats, lost their homes,
12 lost their automobiles. And they had -- they were eligible, and
13 they had paid in, but it was hard to justify that they were --
14 the result of their layoff was due to the freeze, so the
15 Department took a very -- the law is not there plain and clear.
16 That's what I'm suggesting to you.

17 I think if anything happens, you ought to opt on the
18 side of the unemployed worker and not be so stringent in
19 administration. I mean, if it's a call not clear enough in the
20 law.

21 MR. PATTILLO: I can tell you that those -- the
22 employment program representatives whom I have met and talked
23 to -- the actual people who stand behind the counter and make
24 the decision, yes, you get benefits; no, you don't -- those
25 people are not in the pejorative sense bureaucrats. They are
26 people who are very concerned about the applicants that come in
27 front of them, and they are quite ingenious in finding a way to
28

1 somebody.

2
3 Now, at the same time, we have the federal Department
4 of Labor looking over our shoulder saying, "California, you must
5 run your program in conformity with federal law, because if you
6 don't conform, you lose your exemption from the Federal
7 Unemployment Tax Act," and every employer in your state suddenly
8 has to pay four times as much in unemployment tax.

9 SENATOR MELLO: Right now in California, as you know,
10 we have eleven military base closures. I have Fort Ord in my
11 area, which is the second largest in the whole nation, largest
12 in California.

13 And Mr. Nagle's been very helpful in coming down and
14 trying to set up transition programs. But I'm just concerned,
15 if -- and the result of the closing has nothing to do with what
16 we in Monterey County did. It's a decision made by the
17 military.

18 But we have 17,000 troops leaving, going to
19 Washington, and there's 13,000 other displaced workers directly,
20 and another 5,000-10,000 indirectly. And I'm just saying that
21 EDD's going to have to really provide a lot of help down there
22 until we can get the transition and get those jobs back again.

23 I just hope that you're compassionate and sensitive
24 enough to come down and do a job that's going to help these
25 people facing a loss of jobs.

26 MS. MACKENZIE: May I respond, sir?

27 SENATOR MELLO: Absolutely.

28 MS. MACKENZIE: We are actively pursuing Job Training

1 Partnership Act funds for displaced workers for military base
2 closures. I know here in the Sacramento area recently, we gave
3 a \$600,000 readjustment, retraining grant.
4

5 We've had millions of dollars that we've doled out
6 throughout the state for the purpose of base closure layoffs.

7 We are -- currently in Washington, D.C., our
8 Department is represented there today and tomorrow to try to get
9 ahold of some of the \$150 million that the Department of Labor
10 has set aside specifically for base closure layoffs. We had
11 originally gone to the Department of Labor and said the problem
12 is so severe in California, we such a large percentage of the
13 military population in the nation, that we would like our fair
14 share of those dollars.

15 The Department of Labor wants us to come back now
16 with specific programs and specific items that we could fund
17 with that money. We are taking aggressive action to let
18 individual employers know what they can do, to let military
19 bases know what they can do to access this money. McClellan Air
20 Force Base, I believe, has a proposal back to the Department of
21 Labor right now to access some of that \$150 million.

22 So, we have an ongoing program to try to get as many
23 federal dollars as are available to us for the very purpose that
24 you raised.

25 SENATOR MELLO: I hope so.

26 Incidentally, Mr. Nagle has agreed to either come
27 down or send somebody on April 24th, down to Monterey, and
28 appear before Mr. Sibert or Ben Williams from the Office of

1 Planning and Research to lay out the programs the state has, the
2 State of California has, to help with the transition in the
3 military base closures.
4

5 You're asking for a proportionate share of the
6 dollars, bear in mind that out of 43 base closures, 11 of them
7 occurred in California. It's a disproportionate share, so we
8 ought to get a disproportionate oversupply of money to take care
9 of the way they cut more bases here than anyplace else,
10 proportionately.

11 Thank you.

12 SENATOR CRAVEN: Thank you. Senator Petris.

13 SENATOR PETRIS: Oakland, my home town, recently got
14 a bunch of money to help retrain. One of them was for Nabisco.
15 Nabisco employees, the whole plant shut down there. I don't
16 remember the number. I saw it in the paper. I was happy to see
17 it. It's going to several designated companies for their
18 employee retraining.

19 In that connection, I wanted to ask about an article
20 that was in the Bee just the other day about the Defense
21 Conversion Adjustment Program, that's partially what you're
22 talking about. And it says that out of 150,000 available, we
23 only have 6 million. And the state is applying to get more, as
24 you indicated, but the statute apparently provides for
25 individual employers, and nonprofits, and unions also to get in
26 and apply, but they have to go through the Department. And the
27 article says that one of the organizations participating, a
28 local nonprofit agency, says that the state told them that

1 they're going to put in a bid for the state as a whole, and
2 therefore, it blocks them from doing it.

3 Can you comment on that?

4 MS. MACKENZIE: Yes.

5 The state had, as I mentioned to Senator Mello, asked
6 for a percentage share of the dollars. The Department of Labor
7 said, "No, come back to us on a program by program basis."

8 SENATOR PETRIS: Now, is that \$150 million the total
9 available nationally?

10 MS. MACKENZIE: Yes. And the service delivery areas,
11 local private industry councils who we work with very closely on
12 these job retraining efforts were invited to attend a conference
13 in February in Burlingame, where Employment Development
14 Department and Department of Labor, and Department -- Bureau of
15 Statistics got together. Told local service delivery areas that
16 -- of the decision made by the Department of Labor; told them
17 what they had to do to proceed further to get the money; made
18 them aware that they were eligible as individual entities to go
19 back and try to get that money. We offered any technical
20 assistance through EDD that we could.

21 We have people that we actually send down to these
22 different agencies that want to get this money and help them
23 fill out the applications, because we have the technical
24 expertise. We're doing everything we can.

25 The entity that you mentioned that was quoted in that
26 particular article did not attend the conference in Burlingame;
27 although the offer was extended to them.

1 SENATOR PETRIS: They don't know how to fill out the
2 form.

3 Thank you.

4 Thanks, Mr. Chairman.

5 CHAIRMAN ROBERTI: Thank you, Senator Craven.

6 Are there any other questions of the three
7 appointees?

8 Is there any opposition in the audience?

9 Then do I hear a motion?

10 SENATOR CRAVEN: Mr. Chairman, I'd like to move Mary
11 H. Hayes, Deputy Director of the Employment Development
12 Department.

13 CHAIRMAN ROBERTI: Senator Craven moves Mary H.
14 Hayes, Deputy Director of the Employment Development Department.

15 Any discussion or debate on the motion? Secretary,
16 call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye.

20 Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Mello Aye.

23 Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye.

26 Senator Craven.

27 SENATOR CRAVEN: Aye.
28

1 SECRETARY WEBB: Craven Aye.

2 Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 SECRETARY WEBB: Roberti Aye.

5 CHAIRMAN ROBERTI: The vote is five to zero;
6 confirmation is recommended to the Floor.

7 Congratulations.

8 Senator Craven now moves --

9 SENATOR CRAVEN: I'd like to move Anita R. MacKenzie,
10 Deputy Director of the Employment Development Department.

11 CHAIRMAN ROBERTI: -- Anita R. MacKenzie, Deputy
12 Director of the Employment Development Department, do pass and
13 to the Floor with a recommendation.

14 Secretary will call the roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye.

18 Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Mello Aye.

21 Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye.

24 Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Craven Aye.

27 Senator Roberti.
28

1 CHAIRMAN ROBERTI: Aye.

2 SECRETARY WEBB: Roberti Aye.

3 CHAIRMAN ROBERTI: Vote is five to zero; confirmation
4 is recommended to the Floor.

5 Congratulations.

6 SENATOR CRAVEN: I'd like to move James G. Pattillo,
7 Deputy Director of the Employment Development Department.

8 CHAIRMAN ROBERTI: Senator Craven moves James G.
9 Pattillo, Deputy Director of the Employment Development
10 Department.

11 Is there any discussion or debate on the motion?
12 Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye.

16 Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Mello Aye.

19 Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Petris Aye.

22 Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Craven Aye.

25 Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27 SECRETARY WEBB: Roberti Aye.
28

1 CHAIRMAN ROBERTI: The vote is five to zero;
2 confirmation is recommended to the Floor.

3 Congratulations.

4 Before we take up Mr. Sayles, we're going to take a
5 five-minute break.

6 [Thereupon a brief recess was taken.]

7 CHAIRMAN ROBERTI: The Committee will come to order.

8 We now have the appointment of Thomas S. Sayles,
9 Commissioner of Corporations.

10 Mr. Sayles, please come forward and tell us why you
11 feel you are qualified to assume this position.

12 Unfortunately, I have to leave again, Senator Craven.
13 I will be back, but I don't think this is a controversial
14 appointment.

15 SENATOR CRAVEN: Everybody's in favor of Mr. Sayles.

16 MR. SAYLES: Thank you, Senator.

17 Senators, my name is Thomas Sayles. By way of
18 background, my undergraduate degree is from Stanford University.
19 Upon graduation, I was elected to Phi Beta Kappa. My law degree
20 is from Harvard Law School.

21 Prior to my appointment by the Governor to this
22 position in June, I had worked at TRW for nine years. I was --
23 I'm a lawyer by training. I have represented the company's
24 electronics, energy, and aerospace businesses.

25 Prior to joining TRW in 1982, I served as an
26 Assistant United States Attorney. I was involved in civil
27 litigation there. Prior to that, I was a Deputy Attorney
28

1 General, also involved in civil litigation.

2 I think my combination of both private sector and
3 public sector experience qualifies me for this job. I find the
4 job both enjoyable and challenging.

5 I have been doing my utmost to try to improve the
6 efficiency of the Department while I've been there. I would
7 urge you to support my appointment to this position.

8 SENATOR CRAVEN: Any questions of Mr. Sayles?

9 Senator Mello.

10 SENATOR MELLO: I've move his nomination to the
11 Floor.

12 SENATOR CRAVEN: Very well.

13 Anyone in the audience wish to comment? There
14 appears to be none.

15 The motion is in order. Call the roll.

16 SECRETARY WEBB: Senator Beverly.

17 SENATOR BEVERLY: Aye.

18 SECRETARY WEBB: Beverly Aye.

19 Senator Mello.

20 SENATOR MELLO: Aye.

21 SECRETARY WEBB: Mello Aye.

22 Senator Petris. Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Craven Aye.

25 Senator Roberti.

26 Three to zero.

27 SENATOR CRAVEN: Let's hold the roll open. I'm sure
28

1 that both Senator Roberti and Senator Petris, since he's a
2 Stanford man, too, want to vote for you.

3 All right, very well. It's out, as far as that's
4 concerned, however, Tom.

5 MR. SAYLES: Thank you very much.

6 SENATOR CRAVEN: Congratulations.

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 3:30 P.M.]

11 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of March, 1992.


EVELYN J. MIZAK
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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

HEARING

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 26, 1992

1:50 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
SENATOR WILLIAM CRAVEN, Vice Chairman
SENATOR ROBERT BEVERLY
SENATOR NICHOLAS PETRIS
SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JAMES M. CONRAN, Director
Department of Consumer Affairs
SENATOR DAN BOATWRIGHT
BOB HOERGER, Newsletter Publisher
Engineers Board Review
WILLIAM GOODE, Attorney at Law
Former Deputy Attorney General
RUSSELL S. GOULD, Secretary
Health and Welfare Agency
SHERRIE GOLDEN, Legislative Advocate
California State Employees Association
CHARLES W. SKOEN, JR.
Community Residential Care Association of California
RALPH BRAVE
Americans for a Safe Future
NILROSINO A. LIM, Provider
Filipino-American Care Providers

APPEARANCES (CONTINUED)

WILLIAM DOBSON, Former Provider
Residential Care Facility

RUTH DOBSON, Former Provider
Residential Care Facility

SAM STEVENS, Volunteer Provider
Boys and Girls Mental Health Centers

RUTH DOYLE, Provider
Sutter Valley Group Home

GARY WILSON, Provider
LKM, Inc.

WILLIE HAUSEY, Legislative Advocate
Various Provider Associations

JAMES T. JOHNSON, III, President
Association for Minority Adolescents in Residential Care
Homes (AMARCH)

KEN SEATON-MSEMAJI, President
United Domestic Workers of America

KENNETH M. KELLER, Chief
Bureau of Electronic and Appliance Repair
Department of Consumer Affairs

JAMES R. SCHONING, Chief
Bureau of Automotive Repair
Department of Consumer Affairs

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
JAMES M. CONRAN, Director Department of Consumer Affairs	1
Qualifications	1
Background	3
Work in DCA	3
Problems with Department	4
Boards Acting as Guilds	5
Intentions	5
Public Hearings	5
Holding Boards and Members Accountable	6
<u>Witnesses in Support:</u>	
SENATOR DAN BOATWRIGHT	7
Interviewing Each Prospective Candidate for DCA Board Memberships	8
BOB HOERGER, Publisher <u>Engineers Board Review Newsletter</u>	9
WILLIAM GOODE, Retired Attorney Former Deputy Attorney General	10
Historical Relationship between Directors of DCA and Boards	11
Blaming Predecessor	12
Importance of SB 961	13
Questions by SENATOR PETRIS re:	
Nature and Scope of DCA's Problems	14
Existence of "Mafia"	14

1		
2	Crying about Past	15
3	Need to Recognize Mistakes of Past	17
4	Capacity in Attorney General's Office	17
5	Question by SENATOR BEVERLY re:	
6	Ranking Order of Power Structure	
7	in State Government	18
8	Statement by MR. CONRAN	18
9	Questions by SENATOR MELLO re:	
10	Problems in Funeral Home Business	19
11	Pushing Agressiveness in Boards	
12	Revoking Licenses	20
13	Public Membership of Boards	20
14	Possibility of More Legislation to	
15	Give Director Authority to Revoke	
16	Licenses	22
17	Public Hearings in Spring	22
18	Additional Comments by MR. GOODE	23
19	Recommendation to Read SB 961	23
20	Majority of Board Membership Comprised of	
21	Public Members Except Healing Arts	23
22	Questions by SENATOR PETRIS re:	
23	Position on Confirmation	24
24	Conclusion by MR. CONRAN	25
25	Pledge to Make DCA Proactive	25
26	Questions by SENATOR PETRIS re:	
27	Support from Agency Secretary	26
28	Opposition to Former Secretary of Agency	26
	Motion to Confirm	27
	Committee Action	28

1		
2	RUSSELL S. GOULD, Secretary	
3	Health and Welfare Agency	28
4	Qualifications	28
5	Career in State Government	29
6	Department of Social Services	29
7	Department of Finance	29
8	State Treasurer's Office	30
9	Service on National Association of State Budget Officers	31
10	Departments in Agency	31
11	Guiding Principles of Agency	32
12	Moving Programs to More Preventive Approach to Government	32
13	Breaking Down Barriers to Improve Services	33
14	Better Access to Primary Preventive Health Care	34
15	Promotion of Self Sufficiency	36
16	Difficult Choices with Limited Resources	36
17	Questions by SENATOR MELLO re:	
18	Appointment of Director to Department of Aging	37
19	Uniform Billing System for Medi-Cal	38
20	Deadline for Operation of Ward Valley Project	39
21	Affirmative Action Plan in Deperatment	41
22	Provider Access to Appeals Process	42
23	Questions by SENATOR PETRIS re:	
24	Access to Health Care	44
25	Long-term Care	44
26		
27		
28		

1		
2	Insurance Industry	45
3	Reduction of Grants in Welfare Reform	47
4	Financing of the Children's Initiatives	50
5	Federal Matching Funds for Safety Net Hospitals	51
6		
7	Funding Versus Actual Need	53
8	Assurance that Feds Will Pay	53
9	Ward Valley Project	54
10	Track Record of U.S. Ecology in Other States	54
11	Analysis of Waste Stream Data	55
12	Requests from Congressman Miller	55
13	Possibility of Recycling	55
14	Testing Below 100-foot Depth	57
15	Use of Liners	57
16	New Recycling Process Developed by Lawrence Berkeley Laboratory	58
17		
18	<u>Witnesses in Support:</u>	
19	SHERRIE GOLDEN, Legislative Advocate California State Employees Association	59
20	CHARLES W. SKOIEN, JR., Consultant Community Residential Care Association of California	61
21		
22	<u>Witnesses in Opposition:</u>	
23	RALPH BRAVE Americans for a Safe Future	62
24	Concern about Ward Valley	62
25	Public Safety and Liability	62
26	Majority of Waste Would Come from Nuclear Power Industry	62
27		
28		

1		
2	Department's Refusal to Grant Hearing on	
3	Details of Project	63
4	Lack of Alternatives in Environmental	
5	Documentation	64
6	Appointee's Relationship with Nuclear	
7	Waste Industry	64
8	Questions by SENATOR MELLO re:	
9	Suggested Solution	66
10	Neutralizing Radioactive Waste by	
11	Recycling	66
12	NILROSINO LIM, Provider	
13	Filipino-American Care Providers of Sacramento	67
14	Lack of Due Process	67
15	Lack of Consistency in Citing Process	67
16	Lack of Support	68
17	No Collection Rights for Board and Care	68
18	Closing of Facility before Scheduling of	
19	Appeal Hearing	68
20	Lack of Correct Direction from Community Care	
21	Licensing	68
22	Questions by SENATOR PETRIS re:	
23	Grounds for Suspension of Facility	69
24	Leading Questions of Investigators	70
25	Number of Clients in Facility	71
26	Normal Procedure of Department	71
27	Location of Facility	71
28	WILLIAM and RUTH DOBSON, Former Providers	
29	Residential Care Home for the Aged	72
30	Closure Incident	72
31	Police Investigation	73
32	Discussion with Fred Miller	73

Request to Change Temporary Suspension Order Rules	74
Lack of Notification	74
Questions by SENATOR PETRIS re:	
Legal Remedy or Appeal	76
Lack of Documentation on Temporary Suspension Order	76
Traumatized by Actions of Community Care Licensing	78
Willingness to Help Change Law	78
Compliance with Section 527 of Code of Civil Procedure Would Provide Due Process	78
Need for Nonbiased Mediation Board	79
Involvement of Phyllis Eversole of CCL	79
Questions by SENATOR PETRIS re:	
Attempts to Contact MR. GOULD	80
SAM STEVENS, Volunteer Provider Boys and Girls Mental Health Centers El Cajon	80
Necessity to Change Population of Clients	81
Background of Operation	81
Involvement of Community Care Licensing through Anonymous Complaint	82
Crisis during July 4th Weekend	82
CCL's Recommendation Not to Renew License	82
Filing of Appeal and Temporary Suspension Order	82
Ordered to Fire Executive Director	83
Closure of Facility	84

1		
2	Not Allowed to Counsel Staff or	
3	Children on Closure	85
4	Traumatic Situation for Children	85
5	Media Involvement	86
6	Coercion of Staff by State's Attorney	86
7	Grounds of Temporary Suspension Order	87
8	Board Put in Undefendable Position	87
9	Questions by SENATOR PETRIS re:	
10	Suggestion on How to Correct	
11	Policy	88
12	Need for Agency's Attitude to Change	89
13	Statements by SENATOR MELLO re:	
14	Request for Brief Summary of Previous	
15	Witnesses' Cases Be Sent to Senator	90
16	Possibility of Needed Legislation for	
17	Corrective Action	90
18	Not Intent of Legislation for "Temporary"	
19	to Become "Permanent"	90
20	Questions by SENATOR CRAVEN re:	
21	Contemplated Changes to Program	92
22	Need to Look into Situation	93
23	Dates for Implementation of Changes	93
24	Ombudsman/Technical Support Unit	93
25	Providers' Lack of Recourse to Department's	
26	Actions	94
27	RUTH DOYLE, Provider	
28	Residential Care Facility	95
	Met with MR. GOULD	95
	Types of Complaints CCL Receives	96

1		
2	Dropping of 33 out of 36 Allegations	
3	at Settlement Conference	96
4	Meeting with Fred Miller	97
5	Meeting with MR. GOULD	97
6	Substantiation of Department's Actions	98
7	Questions by SENATOR PETRIS re:	
8	Independent Investigation by AG's Office	
9	under Current Process	99
10	Need for Communication	100
11	Response by MS. DOYLE	100
12	Department not Adhering to Regulations	101
13	No Way for Providers to Enforce Laws	101
14	Fear of Retaliation from Department	101
15	Request for Direct Report if Department	
16	Retaliates for Testifying	102
17	GARY WILSON, Former Provider	
18	LKM Homes	103
19	Meeting with MR. GOULD	103
20	Department's Refusal to Adhere to	
21	Rules and Regulations on Books	104
22	Taking of Illegal Out of State	
23	Deposition	105
24	Government Code Sec. 11511	105
25	Green Book	107
26	Use of Media to Close Facilities	107
27	Dragging out Appeals	108
28	Questions by SENATOR CRAVEN re:	
	Place of Residence	109
	Bringing Problems to Attention of	
	State Senator	109

1		
2	Response by MR. GOULD	109
3	Establishment of Independent Task	
4	Force to Review Issues	110
5	Verification of Actions Taken	110
6	Meeting with Interested Senators to	
7	Share Findings	110
8	Effect of Proposed Changes in Procedures	
9	to Already Closed Facilities	111
10	Request by SENATOR PETRIS re:	
11	Submit Questions on Nuclear Waste Problems	
12	to MR. GOULD	112
13	Put Over Hearing until Hearing for	
14	Director of Department of Health Services	113
15	Discussion	113
16	Decision to Put Over Hearing for Three Weeks	114
17	<u>Witness in Support:</u>	
18	WILLIE HAUSEY, Legislative Advocate	
19	Numerous Provider Organizations	115
20	Need for Provider Rights	115
21	JAMES T. JOHNSON, III. President	
22	Association for Minority Adolescents in	
23	Residential Care Homes	116
24	Need to Restructure Appeals Process	116
25	Request that Committee Inquire as to	
26	Agency's Position on Institutionalization	
27	Vs. Community-Based Programs	117
28	Current Rate Setting System	117
	Request for Meeting with MR. GOULD	117
	Closures Related to Lack of Due Process	
	Should Be Allowed to Obtain Licenses	118
	Need for Affirmative Action Program	118

1		
2	KEN SEATON-MSEMJI, President	
3	United Domestic Workers of America	119
4	Former Hostility of Department	119
5	New Accessibility under GOULD's Leadership	120
6	Questions by SENATOR MELLO re:	
7	Date of DOBSON Incident	121
8	Date of Incident Described by STEVENS	121
9	Resetting of Hearing for Three Weeks	122
10	KENNETH M. KELLER, Chief	
11	Bureau of Electronic and Appliance Repair	
12	Department of Consumer Affairs	123
13	Qualifications	123
14	Background	123
15	Printing Business	123
16	Aims and Goals	124
17	Certification of Repair Technicians	124
18	Service Contracts	125
19	Enforcement of Disclosure Laws	125
20	Motion to Confirm	126
21	Committee Action	126
22	JAMES R. SCHONING, Chief	
23	Bureau of Autommotive Repair	
24	Department of Consumer Affairs	127
25	Qualifications	127
26	Legislative Background	127
27	Participation in Coro Foundation	127
28	State Smog Check Program Top Priority in Past	128
	Number of Disciplinary Actions	129
	New Automotive Technology Ahead of	
	Repair Skills of Technicians	130

1
2 Question by CHAIRMAN ROBERTI re:

3 Programs to Update Auto Repairmen 131

4 Additional Training through
5 Federal Grants 132

6 Motion to Confirm 132

7 Discussion by SENATOR BEVERLY 133

8 Committee Action 133

9 Termination of Proceedings 133

10 Certificate of Reporter 134

11

12

13

14

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--oo0oo--

CHAIRMAN ROBERTI: We will now take up Governor's appointees appearing today.

Do we have any appointees who have a number of out of town witnesses?

MS. MICHEL: I don't know, Senator.

CHAIRMAN ROBERTI: We will take them in alphabetical order. James M. Conran, Director of the Department of Consumer Affairs.

Mr. Conran, we will ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position.

MR. CONRAN: Good afternoon, Mr. President, Members of the Senate Rules Committee.

I have a brief opening statement I'd like to make that I think will cover probably many of the questions that the Committee would like to ask me.

It's a pleasure to appear before you. It's an honor to be nominated by the Governor, Agency Secretary, and supported by numerous community and consumer leaders for my appointment as Director of the Department of Consumer Affairs. With your support and confirmation, we will complete our goal of putting the word "consume" proactively back into the Department of Consumer Affairs.

In researching DCA, I came across a remark of a predecessor that rings as true today as it did over 60 years

1 ago. In 1929, J.S. Casey clearly and concisely stated the
2 mission of the Department. His words:

3 "To protect the public health, to
4 protect the public against fraud,
5 and to generally elevate the
6 standards of industry."
7

8 I have always had a great interest in government,
9 but never envisioned myself as part of the process. I come to
10 government from the private sector with the belief that
11 individuals can make a difference.

12 We want to make SCA a more effective and efficient
13 protector of the public, and we want to make DCA a better place
14 to work.

15 Serving as Director is an honor and a most
16 challenging opportunity. My first and foremost duty has been
17 to make DCA and its 2300 employees dedicated consumer advocates
18 who are committed to making California a better place to live,
19 work, and to raise families.

20 The impact of DCA on the lives of Californians is
21 tremendous. We affect the public from cradle to grave. DCA
22 regulates 180 professions and industries, including:
23 accountants, automobile mechanics, smog mechanics, boxers,
24 contractors, doctors, embalmers, nurses, veterinarians,
25 collection agencies, and cemeteries. Approximately one-third
26 of the state's employed population is either licensed directly
27 by DCA or works for one of our 2.1 million licensees.

28 Governor Wilson and Agency Secretary Dr. Bonnie

1 Guiton have given me the essential tools to turn DCA from a
2 back-water agency to an organization that will be aggressive
3 and proactive in putting the public first.

4 We have brought strong management skills to the
5 Department. I have over 14 years of corporate experience with
6 Pacific Bell, specializing in regulatory, consumer, and public
7 policy issues.

8 Our appointees have either corporate experience or
9 previous experience in executive positions within state or
10 federal government. We have replaced 20 of the 22 incumbents
11 from the previous Administration in exempt positions. Two-
12 thirds of these appointees are women or minorities. We moved
13 career managers in other positions at DCA to shake off the
14 malaise that had overcome the Department.

15 We worked to rebuild trust with critical
16 stakeholders in both the government and private sectors.
17 Frankly, DCA was not up to the standards that both we and the
18 public have a right to expect and demand. Morale was low, and
19 there was little, if any, trust or cohesion between
20 employees, board members, their officers, the media, or the
21 Legislature.

22 In the past year, I visited every one of the over
23 100 offices under the umbrella of the Department of Consumer
24 Affairs at least once. The opportunity to meet and talk with
25 most of the employees was extremely valuable to me. I shared
26 my vision of DCA with them, asked them for their support and
27 their commitment. They shared their experiences, their hopes
28

1 and desires, and collectively, we are in agreement that DCA can
2 do much more for the people of California.

3 We recognize that Californians live in a highly
4 technical, computerized age that contains large bureaucratic
5 structures and corporate conglomerates where individual rights
6 are often forgotten or ignored. Our job is to assist citizens
7 and businesses cope in these uncertain and troubled economic
8 times.

9 We want to be fair and balanced in our decisions
10 and actions. We want to be pro consumer, we want to be pro
11 business. Some may think this is idealistic, but I do not.
12 Encouraging businesses who are serving the interest of
13 consumers is a major focus of our efforts. We will assist and
14 partner with these companies who desire to provide better
15 services to the public.

16 We want to support businesses in providing quality
17 goods and services the public needs and wants. We want to
18 acknowledge and expand the pool of reputable goods and
19 services as we work to eliminate the untrustful --
20 untrustworthy, unlawful practitioners and business people.

21 Our goal is to protect the public. We want to make
22 the marketplace fair, accessible, and truthful in providing the
23 public and businesses with maximum free-market options.

24 Above all, we want businesses and practitioners to
25 know that if they fail and abuse the public, we will be
26 aggressive and relentless in our pursuit of them.

27 We are currently involved in a rigorous dialogue
28

1 with the boards the Department regulates. Many have a
2 disappointing reputation of protecting the public; some do not
3 protect the public at all.

4 Some boards have become nothing more than guilds or
5 exclusive country clubs, which are either used to keep
6 competition out of the marketplace, or serve to protect
7 industry from the public. Many boards use their regulatory
8 cartels to limit entry into the marketplace, thus keeping
9 competition out while keeping cost high.

10 We must not lose sight of the only reason why we
11 regulate professions and industries. It's to promote fair
12 competition and to protect consumers. Government must support
13 both reputable performers and consumers from the poor or
14 deceitful bad apples.

15 DCA will aggressively pursue the path that puts the
16 consumer interest before the interest of the guilds.

17 Thomas Jefferson once said that citizens should
18 tear down and rebuild government every 20 years so it would not
19 lose touch with the people. DCA is now 22 years old.
20 Therefore, this year the Department will conduct public
21 hearings to revisit the Department's purpose and structure. We
22 hope to look prospectively to the future and meet the needs,
23 the ever changing needs, of the people of California.

24 It is our intent to look thoughtfully at DCA in
25 order to determine how it can best meet the demands of the
26 rapidly changing marketplace and public, not just for today, but
27 for the future.
28

1 Boards will be more effective when they focus on
2 setting policy, public policy, over self-interest policy.
3 Board must set fair standards for entry and competency, and
4 they must be the adjudicators, setting firm and consistent
5 discipline. The Administration, the Legislature, and the
6 public must hold boards and board members accountable for their
7 actions or their lack of action.

8 The past year has been an extremely busy one for
9 the employees of the Department. There is increased and
10 renewed energy for our activities by the employees. They have
11 a Governor, an Agency Secretary, and a Director who believe
12 that DCA must play a vital role in government and in the lives
13 of the people of the state.

14 Provide me and the team we have in place the
15 opportunity to continue what we have begun. We assure you a
16 Department that will serve the public and licensees fairly and
17 honestly.

18 You have been provided with a copy of my beliefs
19 and values. I have it here in my hand, and it's been given to
20 your staff. It is something that I wrote earlier this year and
21 distributed to all the employees who work for me in the
22 Department.

23 It's important for employees to understand how I
24 approach day-to-day decisions, and how we will judge those that
25 we work with. We want all of our employees to be consumer
26 advocates, and we want them to remind me personally of my
27 beliefs and values if they ever feel I have lost sight of why I
28

1 am Director.

2 I respectfully ask you to do the same. After all,
3 consumer protection is a team effort.

4 In conclusion, there is a quote which reflects
5 these troubled times and my own proactive approach to consumer
6 protection and management. The quote is by John Paul Jones.
7 Captain Jones said:

8 "I have no interest in ships that do
9 not sail fast, for I plan to sail in
10 harm's way."

11 I invite DCA employees, board members, Legislators,
12 and the public to sail with me in making the Department more
13 responsive to California's changing needs.

14 These are tough times. There are too many problems
15 and too few resources to meet the demands.

16 My pledge to you is the same I have given the
17 Governor, that Jim Conran will be straightforward, fair, will
18 seek solutions to problems with creativity, dedication, energy
19 and urgency.

20 We are here to help the public. They should be
21 able to depend upon DCA to defend their interests and their
22 rights, and to encourage businesses to provide them with
23 reputable goods and services they deserve.

24 Thank you.

25 CHAIRMAN ROBERTI: Thank you very much, Mr. Conran.
26 Senator Boatwright is here to testify in support.

27 SENATOR BOATWRIGHT: Yes, Mr. Chairman and Members.
28

1 I'm appearing to urge your recommendation of confirmation by
2 the Senate.

3 I have worked with Mr. Conran for the last year,
4 and during that time, I've seen a very dramatic change in the
5 attitude from the Director, the Director's office. I've
6 discussed this with Mr. Conran many times. I've also discussed
7 with him specifics.

8 I'm convinced, and I'm convinced that he believes
9 that the only reason a board exists is to license people they
10 feel are competent in a particular field so that the consumer
11 is protected rather than the guild that too often in the past
12 the boards have represented. I'm absolutely convinced that's
13 his goal.

14 I had a concern that I discussed with him. He has
15 taken the time, and it's rather tedious, I know, to interview
16 each prospective applicant who is subject to appointment by the
17 Governor to one of the boards to replace the members that are
18 there. I wanted to make sure that he was dealing with those in
19 a nonpartisan way, that partisanship and politics was not
20 entering into that. I specifically discussed this with him.

21 I'm convinced that it is being handled in a
22 nonpartisan way, looking for the best person to serve on these
23 boards.

24 So, I'm here today to say that it's been refreshing
25 to have a person who, as he said to you, the only reason that
26 the boards exist should be to protect the consumer. I think
27 that's his goal. I think with what we're working on together,
28

1 we will be able to perhaps in the future consolidate some of
2 these boards or eliminate some other boards, make them more
3 efficient, and above all, to make sure that that goal of really
4 protecting the consumer is the only reason any board exists.

5 So, I would urge your recommendation for
6 confirmation.

7 CHAIRMAN ROBERTI: Thank you, Senator.

8 Is there anyone here to testify in support? Yes,
9 please come forward.

10 MR. HOERGER: Senator, my name is Bob Hoerger. I
11 privately publish the newsletter Engineers Board Review, which
12 covers the activities of one of the boards under DCA. In
13 connection with that work that I've done for a couple of years,
14 I've had quite a bit of contact with some of the divisions in
15 DCA: the Division of Investigations, the Legal office, Central
16 Testing, and so forth.

17 I also -- as I say, I'm licensed by one of the
18 boards as a surveyor. I'm also an attorney and occasionally
19 practice public interest law pro bono in connection with these
20 boards' activities.

21 I came in contact initially with Director Conran
22 early in his term in which I had a perceived problem with an
23 action that he took, and the result of that communication has
24 brought me here. I decided I should come up here from the Bay
25 Area because I thought that he handled the problem extremely
26 well.

27 It was an issue in which the Department was
28

1 advocating on behalf of consumers in the telephone caller I.D.
2 issue. I perceived a problem because Mr. Conran had previously
3 been with the telephone company. All I needed to do was make a
4 telephone call and raise this problem. Mr. Conran very
5 promptly, openly, and to my complete satisfaction, took care of
6 the issue.

7 I thought there was an initial greenhorn misstep.
8 He took care of it honestly, openly, and in a way that I have
9 never seen happen up in the bureaucracy up in Sacramento
10 before, and i was very pleased with the change of bureaucratic
11 procedures from what I had seen before.

12 So for that reason, I think you could not do better
13 than to have a man like this in this important position, and
14 I'm pleased to support him.

15 CHAIRMAN ROBERTI: Thank you very much.

16 Yes, please come forward.

17 MR. GOODE: Mr. President and Senators, my name is
18 William Goode. I'm a semi-retired attorney, which is probably
19 the worst kind except for those who are not yet retired.

20 I'm also a former Naval officer, and I was raised
21 on John Paul Jones. And today I hope that my ship is fast
22 because I feel I'm standing in harm's way.

23 SENATOR PETRIS: Do you go back that far?

24 [Laughter.]

25 MR. GOODE: At the Naval Academy, John Paul Jones
26 is there at your crypt [sic]. You go to chapel right over the
27 crypt, and he is part of your life. That's true.
28

1 My comments are based on my 25 years' experience in
2 the Department of Justice as a Deputy Attorney General. Most
3 of that time was spent in representing the Department of
4 Consumer Affairs, the Director, and the various constituent
5 boards and bureaus in their legal problems.

6 I've seen many directors come and go. I've been
7 very familiar with the problems.

8 It's been my experience that historically, the
9 relationship between the Director and the boards, particularly,
10 has been a constant struggle for power, domination. The boards
11 consider themselves to be completely independent of any control
12 by the Director, and some of the Directors have felt that they
13 are dominant, that they have the right to control all of the
14 boards. The truth actually is somewhere in between.

15 We don't really have that particular problem here.
16 Jim Conran is, obviously, a public relations man. His
17 background is public relations, and he's damn good at it. He
18 has made a number of presentations and interviews granted to
19 the newspapers, one in the San Francisco Examiner just a very
20 short time ago.

21 But running throughout all these newspaper articles
22 is one predominant theme, and that is: "I don't know what I'm
23 going to do. I've got a tough job. Things are so bad. My
24 predecessor left things all screwed up. Morale was bad. The
25 boards are belligerent; they won't cooperate. The state
26 personnel are incompetent; I can't get them to do what I want
27 to do. But I'm going to attack this problem on a high moral
28

1 plain."

2 I'm not sure what the high moral plain is, because
3 I really haven't seen any manifestations. I can only attribute
4 that to the fact that different people have different ideas of
5 morality.

6 It is that concept that concerns me. There are all
7 types of leadership. A leader can drive; he can push; he can
8 threaten; he can retaliate; he can promise; he can goad; he can
9 say "follow me." But one thing that he cannot do and remain
10 effective is to harp and cry about how bad things are because
11 of what his predecessor did, and to blame his predecessor for
12 everything.

13 I will give Jim credit. He did inherit a mess.
14 The last Administration, the Department of Consumer Affairs was
15 simply an abortion, it was a "mafia". And you were either on
16 the inner team or off with your head.

17 He faced that. Having faced that, he had the
18 responsibility from the day that he came aboard, this was his
19 job, and he is the one that is responsible.

20 And I would like to see this business of blaming
21 the prior Director and the prior Administration for all the
22 evils, which did exist -- and that the responsibility be
23 exercised by Jim.

24 Now, the Governor's Office appointed some top-level
25 people to his senior staff. Jerry Knight, legal, is one of the
26 most competent attorneys in the Attorney General's Office when
27 I was there. Lance Barnett, very high credentials. So, he's
28

1 got all the materials.

2 Jim is a very intelligent and a very capable man.
3 I think that he should be confirmed, but it should not be a
4 pattern of back-type confirmation, "Let's strike up the band."
5 But it should be a very somber confirmation and say, "This is a
6 tough job. You've tried it. You want it. You're qualified.
7 You've got it. Now stop the crying; take care of your own
8 responsibilities. Get on with the job."

9 Let's have less rhetoric and more action. The
10 Director actually is the fifth most powerful man in the state.
11 When I discussed Senate Bill 961 with Jim several weeks ago, he
12 had no knowledge of it. Yet that bill was probably one of the
13 most important pieces of legislation affecting the Department
14 of Consumer Affairs in 20 years. It gives the Director the
15 authority to get into examinations, examination procedures
16 where there are alleged irregularities. There are a number of
17 examination irregularities, and so far, the action has been
18 very, very reluctant.

19 But with that comment, I think that Jim Conran has
20 the staff, the ability, the determination, and if the crying is
21 stopped and the responsibility's accepted for what he did, then
22 I think you'll have a damn good Director, a damn good
23 Department. If you don't, there are going to be more problems.

24 Thank you.

25 CHAIRMAN ROBERTI: Thank you very much.

26 SENATOR PETRIS: May I ask a question.

27 CHAIRMAN ROBERTI: Yes, Senator Petris.
28

1 SENATOR PETRIS: This is the first time I've ever
2 heard that Consumer Affairs was in a horrible mess.

3 So we can avoid that similar mess in the future,
4 can you briefly tell us the scope of the problem? What was the
5 nature of the problem?

6 MR. GOODE: The nature of the problem was, you had
7 a "mafia". The Department was controlled by a very small
8 clique at the top under the Director. The Director couldn't
9 care less about running the Department at that time.

10 SENATOR PETRIS: You mean the Agency head?

11 MR. GOODE: No, the Director of Consumer Affairs.
12 He had other interests, so the actual running and the brains
13 behind the Department was at a lower echelon.

14 SENATOR PETRIS: Are these civil servants you're
15 talking about, or --

16 MR. GOODE: No, no.

17 SENATOR PETRIS: -- or appointments?

18 MR. GOODE: These are appointees. And they ran the
19 thing, and they infiltrated all the boards. People were
20 training in the Department under this "mafia", and then they
21 went out into the board. And that's how they controlled the
22 boards. Many of the boards were under the complete domination
23 of this "mafia".

24 SENATOR PETRIS: Did they carry out the public
25 policy of the statutes? Is that just a turf fight to see who's
26 going to run it, or --

27 MR. GOODE: No, sir.
28

1 SENATOR PETRIS: -- were they going contrary --

2 MR. GOODE: There were numerous irregularities,
3 particularly with the procurement of state contracts for
4 examinations. There were numerous irregularities, and numerous
5 irregularities on the boards themselves. Now --

6 SENATOR PETRIS: Was that on all the boards?

7 MR. GOODE: I don't know. I'm not familiar with
8 all of them, but the ones that I was familiar with, yes.

9 There were the board members, the members were
10 associating with the contractors. And it was a fairly bad
11 situation.

12 Now, one of the things that Jim did, he did say he
13 came in with a clean broom and swept everything out. Almost.
14 He left behind two of the key people in the "mafia". And so,
15 initially -- initially there was the continuation of this
16 thing, and Jim made some, from an attorney's point of view, he
17 made some bad legal decisions at the very beginning. But
18 eventually there were changes made and those were corrected.

19 I don't believe that that type of a situation could
20 possibly exist again, because Jim's interests are quite a bit
21 different from the prior Administration. And I cannot imagine
22 that type of a "mafia" -- cannot imagine him allowing anyone in
23 his organization to go off into this subculture type thing that
24 existed before. So, I see no possibility of that happening
25 again.

26 SENATOR PETRIS: So you're recommending we confirm
27 the appointment?
28

1 MR. GOODE: I recommend that his appointment be
2 confirmed for the reasons I've stated. He does have the
3 ability. He is intelligent. He's experienced.
4

5 But I think it should be pointed out clearly to
6 him that this crying about what has gone on in the past, and it
7 was bad, but the crying has got to stop.

8 SENATOR PETRIS: Who's doing the crying?

9 MR. GOODE: Jim. In every newspaper article that
10 -- every newspaper article that has been published in which he
11 has been interviewed, there has been the comment that -- in
12 fact, he made the comments right here today about how bad the
13 boards and bureaus were, and how he couldn't get them to do
14 anything. That same theme was carried over to the newspapers.

15 Enough is enough, and there has to be a point where
16 any leader has to say, "All right, what is past is past. This
17 is now my shop. I'm going to run things." And do it.

18 He does have the power. As I say, he's the fifth
19 most powerful man in the state, Senator Roberti being number
20 three.

21 CHAIRMAN ROBERTI: Thank you very much.

22 MR. GOODE: But it was a very --

23 CHAIRMAN ROBERTI: Senator Mello said I was number
24 two.

25 MR. GOODE: Willie Brown outranks you.

26 CHAIRMAN ROBERTI: After Willie Brown.

27 [Laughter.]

28 MR. GOODE: But I think that he should be confirmed

1 subject to that.

2 Actually, whether you do nothing, I'm sure he --
3 now that I've sailed into harm's way, I'm sure that he has
4 heard what I had to say, and he's going to take it to heart
5 whether he likes it or not. And he can't possibly ignore it.

6 SENATOR PETRIS: Well, he can't ignore the past
7 problems either, can he? In order to be effective, he's got to
8 be aware of what happened before.

9 MR. GOODE: More than being aware of it, he has to
10 be able and willing to do something about it.

11 SENATOR PETRIS: You say he's done it.

12 MR. GOODE: I had to file -- I had to file a
13 special petition to get him to act on one thing, and then I had
14 to get the Governor's Office to call and direct that he read it
15 to correct some of the problems. But that was when he first
16 came aboard and he still had this -- he still had to deal with
17 what was left of the old organization.

18 Now that's all gone. All of those people that were
19 involved are now gone, and he has his own team in there. And
20 they are gradually coming up, and hopefully, all these problems
21 are going to be worked out.

22 The problems with the boards themselves can only be
23 worked out with some command attention, and he does have the
24 authority under Senate Bill 961 to take care of those.

25 SENATOR PETRIS: What was your capacity in the past
26 25 years?

27 MR. GOODE: I was a Deputy Attorney General in the
28

1 Civil Division, Office of the Attorney General, the Licensing
2 Section. And one of my primarily responsibilities was handling
3 cases for the Department of Consumer Affairs as a Department,
4 for the Director of Consumer Affairs and --

5 SENATOR PETRIS: What kind of cases? Were they
6 consumer protection cases?

7 MR. GOODE: These were consumer protection cases,
8 licensing cases, challenges to authority by the -- by members
9 of the public, and supporting the Department and the Director.

10 SENATOR PETRIS: Thank you very much.

11 CHAIRMAN ROBERTI: Senator Beverly.

12 SENATOR BEVERLY: I'm curious, Counsel, before you
13 leave.

14 You mentioned the Director of Consumer Affairs is
15 the fifth most important person. The Speaker's second,
16 President Pro Tem third. Who's the one in four?

17 [Laughter.]

18 MR. GOODE: Obviously, you've got to give the
19 Governor some credit, and I have to give my Attorney General
20 some credit --

21 SENATOR BEVERLY: I see.

22 MR. GOODE: -- because it isn't realized how much
23 power the Director really has. He can enforce any state or
24 federal law protecting consumers, and nobody else can do that.

25 SENATOR BEVERLY: Thank you.

26 MR. GOODE: He's got the power.

27 MR. CONRAN: I'd like the record to show that I
28

1 didn't say I was in the top five.

2 [Laughter.]

3 MR. CONRAN: And please put that in bold letters.

4 CHAIRMAN ROBERTI: The head rests lightly on the
5 throne.

6 [Laughter.]

7 SENATOR MELLO: Mr. Chairman, just a brief
8 question.

9 CHAIRMAN ROBERTI: Senator Mello.

10 SENATOR MELLO: I guess the last witness hadn't
11 read the statement made by Mark Twain cautioning people to
12 believe everything they read in the newspapers.

13 What I'd like to ask you about are, there has been
14 from time to time problems in the funeral home business.

15 Do you think there are problems there today? Who
16 do you plan to help to correct those?

17 MR. CONRAN: I do believe there are serious
18 problems in those particular industries, as the Senator is well
19 aware, but just so the record would show, the Department has
20 no day-to-day control over any of the boards that are under the
21 DCA umbrella other than to veto regulations that do not serve
22 the public interest well.

23 Currently, Assemblywoman Speier has a few bills
24 that would give more authority to the Department in terms of
25 managing enforcement and compliance. We have yet to complete
26 our evaluation of those bills, so I'm not in a position to
27 speak from any strength.
28

1 But one thing, if there's any trademark that we
2 wish to leave by the time we leave our positions is, once
3 again, putting in the Department proactive and aggressive
4 enforcement of protecting the public. In the area of death,
5 there is no opportunity to make matters whole again for a
6 family. If a funeral is botched up somehow, if somehow a
7 service is harmed, that is something that can never been healed
8 again, and I think that's something the industry has to be very
9 sensitive to.

10 I understand to them it's a business. But for most
11 people, that's the most excruciating moment of their lives;
12 most painful moment of their lives. And to have the departing
13 of a loved one be marred by incompetency, or to be ripped off
14 by criminal activity, I think needs to be dealt with in the
15 most strictest and aggressive manner possible.

16 And one of the things that we are pushing the
17 boards to do, which they have not done, is to be aggressive in
18 revoking licenses. To do business in California is not a
19 right; it's a privilege. And those who abuse the public have
20 no right to do business in this state.

21 SENATOR MELLO: Is that Board of Funeral Directors
22 and Embalmers, do all the members of that board constitute
23 people from those categories, or are there other public
24 members?

25 MR. CONRAN: There are public members. In fact, if
26 I'm not mistaken, both the Cemetery Board and the Funeral Home
27 Directors and Embalmers are majority public members.
28

1 I think one of the issues, and Senator Boatwright
2 spoke to it, is, I have taken a tremendous amount of my time in
3 interviewing candidates for the Board, both industry members
4 and public members, for any of the boards in the Department,
5 because I want to ensure that the types of people on the board
6 are going to come there, they're going to do their homework.
7 They are there to realize they're there for one reason. It is
8 not to embellish their resume; it is not to help their
9 professional status. It's to protect the public. And if we
10 don't have confidence that those people are going to protect
11 the public, then we don't want them on our boards.

12 SENATOR MELLO: Are there other boards under your
13 Agency that are made up exclusively of their own industry
14 representatives?

15 MR. CONRAN: All boards have industry members. A
16 majority of the boards do have, it's my understanding, public
17 members. Quite a few of the boards are majority industry
18 members, and the Contractors -- no, Contractors are public.
19 The Medical Board, I know, is one. The Accountancy Board, I
20 believe, is another. But most of the boards have a fair
21 sampling of public members.

22 The problem is that public members are easily
23 swayed by influential arguments by people who are in the
24 industry. And you have to be a very strong person, and a very
25 courageous person, to stand up against people who -- a lay
26 person standing up against a doctor and saying, "Your policy is
27 wrong. It doesn't make sense for the public good."
28

1 Most of the arguments these boards get involved in
2 are food-chain issues. They're looking at who can gobble more
3 of the other person's economic pie. And these are -- those are
4 not of concern, I feel, to the public. The issue is quality
5 care, quality services delivered at a good price, and if
6 there's something wrong -- if something goes wrong, that
7 someone's there to take care of it for them.

8 SENATOR MELLO: You stated that you're trying to
9 urge this board to revoke more licenses. I guess you're making
10 the statement that you yourself and your Department do not
11 have authority over that process?

12 Do you feel that some additional -- I feel that
13 your Department ought to have greater responsibility in taking
14 action. Are you asking for some legislation that would give
15 you that authority that might provide a better way of revoking
16 these licenses if they were deemed to be necessary?

17 MR. CONRAN: I -- my usual approach is, if you can
18 make something that's there work better, try to make it work
19 better. And that's been our first approach: trying to make
20 the boards live up to their obligations, and holding them
21 accountable for their obligations. And if they can't do it,
22 then I think it's the role of us to do something -- something
23 else.

24 In my prepared remarks, Senator, I did mention that
25 in the spring, we will be holding public hearings to get public
26 comment as to how we can make the Department better, more
27 aggressive. And I think from that, legislation will come. But
28

1 I think it would be premature for me to throw out some issues
2 without getting a good public record, inviting consumers and
3 industry people to give us their best thinking.
4

5 SENATOR MELLO: Thank you.

6 MR. CONRAN: Thank you, sir.

7 MR. GOODE: Senator Roberti, may I make one more
8 additional comment?

9 CHAIRMAN ROBERTI: Yes, one last minute.

10 MR. GOODE: This concerns me somewhat.

11 Apparently, in spite of his promise to do so, Jim
12 might not have read Senate Bill 961, which gives him the power
13 and the authority to intervene in any board's proceeding.
14 Gives him the power to take over any proceeding from any board.
15 So, the power is there.

16 So, I recommend that at the first available
17 opportunity, that he review Senate Bill 961.

18 SENATOR MELLO: Has that been passed?

19 MR. GOODE: Yes, sir. It was effective the first
20 of January. And I was looking forward to it, because it would
21 -- it should have eliminated a lot of the problems. But
22 apparently, if the Department doesn't know anything about it,
23 it isn't going to solve any problems.

24 The second point is that all of the board except
25 the healing arts have a majority of public members. And to say
26 that the public members are cowed by the professionals is just
27 simply not true. With a majority, these public members feel
28 that their duty is to protect the public from the professionals

1 ripping them off. And they come avowed to these boards, mostly
2 avowed to protect the consumers from the professionals and keep
3 the professionals in line. And they generally oppose most of
4 the actions that are undertaken by the professionals.

5 With the healing arts, it's different, and there
6 there's a reason to have the professional people in charge, and
7 they do. And there the nonprofessionals may be cowed.

8 But the majority of the boards, no. The public
9 members actually really are in control, and they speak.

10 Thank you very much, Senator.

11 CHAIRMAN ROBERTI: Senator Petris.

12 SENATOR PETRIS: I need to ask you another
13 question.

14 MR. GOODE: In harm's way.

15 SENATOR PETRIS: Let me ask you one more time, are
16 you in favor of confirmation?

17 [Laughter.]

18 MR. GOODE: I am in favor of Jim --

19 SENATOR PETRIS: I'm a little bewildered here. You
20 are in favor?

21 MR. GOODE: I'm in favor because I feel that if you
22 make no comment at all, at least Jim has the word. He can't
23 very well now just go back and say, "961, don't bother me."

24 He's got to read it. So what I've said is going to
25 make an impression. He'll probably hate my guts, but that's
26 the hazard of standing in harm's way; sometimes you get shot.

27 SENATOR PETRIS: Thank you.
28

1 CHAIRMAN ROBERTI: Anybody in opposition?

2 You may conclude, Mr. Conran, but I don't think you
3 really have to.

4 MR. CONRAN: I do want to say something for the
5 record.

6 One, I don't consider myself a whiner, but I am a
7 realist. I think people need to know that we have had a
8 Department of Consumer Affairs that has not been proactive.
9 And it is -- and I am making the pledge to you that I'm going
10 to make it a proactive Department, a Department that will serve
11 the public good well, will serve it promptly and efficiently.

12 And if that's whining, then I'm going to whine a
13 lot more because the issue here is to build a consensus in the
14 Department.

15 I'm a caretaker. I'm here for just a few years,
16 and someone will follow in behind me. And I want my
17 predecessor -- when my successor comes here and has a
18 Department that is managed well, and they can take it to higher
19 heights than I hope that I will take this Department.

20 We have good employees in the Department of
21 Consumer Affairs. They care about what they're doing. They
22 are dedicated, and we're giving them the leadership to do so.

23 With your support, and your support for the rest of
24 the other members of my team that will be coming before you, I
25 think that we will give you a Department you can be proud of.

26 CHAIRMAN ROBERTI: Thank you.

27 Senator Petris.
28

1 SENATOR PETRIS: Are you getting pretty good
2 backing from the Agency, the Super-Agency head, for policy?

3 MR. CONRAN: Oh, tremendous support from Dr.
4 Guiton, tremendous support. She has a real value for what
5 consumerism means, and it's been an important part of her life.
6 And she's both -- not only provides her own strong leadership,
7 but tremendous inspiration and encouragement. So, we have a
8 very positive working relationship.

9 SENATOR PETRIS: I've known her for sometime, and
10 that's about what I would expect. I made the motion for her
11 confirmation.

12 I'm not surprised about what you say about previous
13 policy. I strongly opposed her predecessor, whose entire
14 business career had been devoted to opposing the whole concept
15 of consumer protection in our statutes. And the Governor put
16 her in charge of it. And I told her at the time in this room
17 and on the Floor, it's not fair for a Governor to put somebody
18 in that position, someone who has devoted a whole lifetime,
19 professional career, trying to destroy an Agency, and then be
20 put in charge of it. To ask her to do the mental gymnastics
21 that are necessary to change her whole philosophy is just
22 totally unrealistic and impractical.

23 I can see you're coming from a totally different
24 direction, and I wish you well in turning the whole thing
25 around.

26 When she first went in there, the Consumer
27 Information Bulletins just completely disappeared. I had
28

1 people go into various shops of the various consumer agencies
2 that had previously been proactive, and they didn't even have
3 little pamphlets anymore, advising the consumer as to the
4 nature of the work of a particular agency, and how they could
5 be of help to the public.

6
7 Hopefully, well, you carry out what you're telling
8 us, I think it's going to be a substantially different
9 operation.

10 Thank you.

11 MR. CONRAN: Thank you.

12 SENATOR BEVERLY: Move the Committee recommend
13 confirmation.

14 CHAIRMAN ROBERTI: Senator Beverly moves
15 confirmation be recommended to the Floor.

16 Secretary, call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye.

20 Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Mello Aye.

23 Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye.

26 Senator Craven. Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.

28 SECRETARY WEBB: Roberti Aye.

1 CHAIRMAN ROBERTI: The vote is four to zero;
2 confirmation is recommended to the Floor.

3 Congratulations.

4 MR. CONRAN: Thank you very much.

5 CHAIRMAN ROBERTI: Russell S. Gould, Secretary of
6 Health and Welfare Agency.

7 Mr. Gould, we'll ask you what we ask all the
8 Governor's appointees, and you're in an especially high
9 position in the Administration, and that is why you feel that
10 you are qualified to assume this position?

11 MR. GOULD: Very good.

12 Mr. Chairman, Members, thanks for the opportunity
13 to appear before you to express my qualifications for the
14 position.

15 I'd like to start out by first introducing my wife,
16 Beth, who is with me today. I have two sons, Patrick who is
17 five, and Kevin who is eight, who are not here.

18 CHAIRMAN ROBERTI: You're very welcome to have
19 Mrs. Gould with us.

20 MR. GOULD: Thank you.

21 I wanted to mention them first because I want to
22 let you know that they are and will continue to be my first
23 priority.

24 In terms of my personal background and my readiness
25 for this position, I'd like to go into a brief history.

26 I was born and raised in Sacramento, clearly a
27 California native. My father was a second generation plumber,
28

1 and after quickly assessing my mechanical skills, encouraged me
2 to pursue an education and complete my college education.
3

4 I was fortunate enough to go to the University of
5 California at Berkeley and graduated there.

6 Upon graduating from the University, I returned to
7 Sacramento and pursued a career in state government. My career
8 in state government started out both in terms of doing budget
9 analysis as well as personnel management. I got involved in
10 labor relations, training in a variety of services associated
11 with state government.

12 During that period of time, I had an opportunity to
13 work in the Department of Social Services for about four years,
14 and I got an understanding of some of the very difficult issues
15 that they face in terms of trying to provide services to the
16 diverse population of California.

17 In 1983, I went to the Department of Finance and
18 had an opportunity to serve in a variety of roles there. I
19 moved up through the Assistant Director position until I became
20 Chief Deputy Director of the Department of Finance. During
21 that period of time, there were two major areas which I focused
22 on. One was labor relations, where I had an opportunity to
23 work with labor unions throughout the state in trying to solve
24 labor disputes and try to work out a constructive relationship
25 for both compensation and in terms of the way benefits were
26 provided to them.

27 In addition, I also had responsibility for local
28 government issues. And I think it was local government affairs

1 that I really gained a great deal of appreciation for some of
2 the issues within Health and Welfare. I think it's very clear
3 when you look at our county structure that they are the entity
4 that is our arm in providing many services, whether social
5 services, or through health services. We work very closely
6 with the counties in delivery of those services, and I became
7 very acquainted in trying to solve problems associated in those
8 areas.

9
10 After the Department of Finance, I took an
11 opportunity to become the Assistant State Treasurer. In 1990,
12 I moved over and worked for Tom Hayes. I was responsible for
13 bond sales, and I established the first College Saver Program
14 for the State of California to encourage people to save so that
15 their children could have opportunities for higher education.

16 I think for both Tom Hayes and I, we had a much
17 shorter career at the State Treasurer's Office than we
18 envisioned, but it was an interesting opportunity.

19 From that point, I got an opportunity presented to
20 me by Governor Wilson, who was then elect, who asked me to
21 assist him on his transition team in putting together a budget
22 plan. And as you know, last year's budget circumstances were
23 as difficult as the state has ever faced, unfortunately only to
24 be challenged by this year, and some of the challenges we will
25 face in the next couple of months.

26 But I was pleased to take that opportunity because
27 I thought there was something that I could contribute, and I
28 wanted to see some tremendous changes in terms of where we head.

1 It was very clear that Governor Wilson had a sense of where he
2 wanted to lead this state.

3 I did have an opportunity during this period of
4 financial management before I went to the Health and Welfare
5 Agency to serve as a representative of the State of California
6 on the National Association of State Budget Officers. I
7 represented the state and participated on their Executive
8 Committee for three years. During that period of time, I
9 chaired their Health, Social Services and Education Committee.

10 I got an appreciation for some of the national
11 issues we were involved in in trying to bring better health
12 care, social services, long-term care, and other very important
13 social issues as we tried to solve them, both on a national
14 perspective and how they moved down to the state and local
15 level as we tried to make differences for all citizens
16 throughout the nation, but in particular to California. There
17 was a specific task force on long-term care which I
18 participated in and got a full appreciation for the dilemmas we
19 face as our society ages, and the tremendous cost challenges
20 that we face for those families as we try to support both the
21 health care costs and the various needs of aging Americans.

22 Moving to the Health and Welfare Agency was an
23 opportunity provided to me in April of last year, and it was
24 one that I relished. The diversity of the issues and the
25 responsibilities are obviously very complex. When you look at
26 the departments in the Health and Welfare Agency, there are
27 eleven, and you're probably familiar with them, but let me
28

1 recite them very quickly. We're talking about the Department
2 of Health Services, Social Services, Rehabilitation, Mental
3 Health, Developmental Services, Employment Development, Aging,
4 Alcohol and Drug Programs, Statewide Health Planning, Emergency
5 Medical Services, and the Health and Welfare Data Center.

6 There are over 35,000 employees in the Health and
7 Welfare Agency, and a budget of over \$28 billion.

8 In looking at this operation, I've tried to
9 establish an approach, and in doing so, I've established some
10 guidelines that I believe are consistent with the Governor's
11 philosophy on how to approach the management of the Health and
12 Welfare Agency, because I think all of us recognize how
13 important its services are to so many Californians.

14 In terms of these guiding principles, first, I
15 think the first one is to move our programs to a more
16 preventive approach to government. And I think we illustrated
17 that last year as we were successful in achieving successes
18 with you on a number of areas which I think are heading in the
19 right direction. When we look at our Medi-Cal program, we
20 started moving towards a managed care approach to delivery of
21 medical services, as opposed to relying on a fee for service
22 approach; trying to get it in early and provide primary
23 preventive care for individuals as opposed to waiting until
24 they became seriously ill, and in many cases, unfortunately,
25 arriving in an emergency room.

26 We also made substantial investments in family
27 planning services in terms of a whole range of service options
28

1 to try to encourage people to act responsibly, as well as to,
2 for very young women, understand that there were other options
3 to them. They shouldn't feel the pressure to move ahead in
4 terms of sexual activity until they're ready. We nearly
5 doubled the funding there, recognizing that that's an important
6 contribution to make.

7
8 Clearly, in terms of teenage pregnancy, we
9 augmented adolescent and family life programs and also did teen
10 outreach programs in order to try to assist young girls.

11 We also expanded residential treatment services.
12 There was \$23 million added last year to the budget for
13 substance abusing pregnant women, trying to put them in a
14 position where they could escape from an environment which had
15 led them to drug dependency and, with their children, move into
16 a situation where they could, hopefully, break out of the cycle
17 they had been in and move towards a better future for
18 themselves and their children.

19 The second principle has to do with breaking down
20 barriers to improve services. I think we tried to approach
21 that in a wide variety of ways. The program realignment
22 legislation of last year, which we arranged with counties in
23 order to move both service responsibilities as well as
24 resources, I think, was in the right direction. And a
25 companion to that was the Family Preservation Act, where we're
26 allowing counties to use some of their foster care dollars for
27 earlier intervention with children, whether it's through drug
28 abuse counseling, whether it's through mental health

1 counseling; efforts to try to reach that young child so they
2 don't start down the path of being in a foster care home, and
3 to try to improve the stability of that home.
4

5 Similarly, we are engaged this year in a variety of
6 efforts. There is a Proposition 99 work group which is going
7 to try to integrate and coordinate maternal and child health
8 programs. We're involved in that endeavor right now, and we
9 think that's important.

10 We just inaugurated just the other day the
11 Farmworker Services Coordinating Council, trying to look at
12 services provided to farmworkers in this state, recognizing
13 that right now we do not have coordinated services. So, we
14 have great participation from a variety of agencies throughout
15 the state, as well as local participation, so that we can
16 better coordinate services to farmworkers in this state.

17 And finally, the Children Summits, which are going
18 on throughout the state right now, trying to bring state and
19 local officials together, including school districts, to look
20 at how to integrate services for children in a more
21 comprehensive way. We need to be very smart on how we deliver
22 services given the tremendous pressures we are under from a
23 financial standpoint.

24 Another principle is to provide better access to
25 primary preventive health care. I think that was illustrated
26 in legislation which was achieved last year. The AIM program,
27 Access for Infants and Mothers, was used to increase prenatal
28 and well baby care for women of low incomes, so that we do get

1 better results in terms of having healthier babies that are
2 born and children that have a good chance for their future.

3 We have a companion to that this year which we have
4 put into the budget, a program called Checkup. And that
5 program basically tries to reach pre-schoolers, up to age six,
6 and to provide them primary preventive care. And this would,
7 again, be focused at low-income kids to give them an
8 opportunity to get the kind of primary preventive care --
9 everything from eye wear to dentistry, to clinical services --
10 so they can have a healthier start.

11 In addition, we have added additional resources, or
12 propose to, for the Song-Brown program, which is family
13 physicians, in order to increase the access for care through
14 family physicians in rural cities -- in rural areas as well as
15 in inner cities. And we think that will be effective in
16 reaching under-served groups, including those with AIDS,
17 refugees, and others that are currently under-served.

18 We have also proposed additional resources for the
19 Health Career Opportunity Program. We've added \$2 million to
20 the budget this year, trying to encourage minorities to look
21 into health care professions, the whole range of health care
22 professions, so that they can provide better care. The
23 experience has been that we will get better service then within
24 the community, and clearly that's something we want to do in
25 order to make sure that we have quality care for all
26 individuals.

27 The last thing, and I'm pleased to be here today to
28

1 mention this, the legislation last year, SB 855, which
2 attempted to aggressively pursue additional federal dollars for
3 our safety net hospitals throughout the state by allowing them
4 to match federal dollars under the Medicaid Program at the
5 federal level. That -- we just got word back today from the
6 federal authorities indicating that our state plan will be
7 approved, which means \$800 million to safety net hospitals
8 throughout California. So, we're pleased we were able to
9 achieve that. I think it's going to be important to bolstering
10 the safety net system and to improving the quality of care for
11 Californians.

12 The last principle I'd like to mention is one which
13 we're going to try to promote self sufficiency in relation to
14 individuals' capabilities. Clearly, as we look at welfare
15 reform, and the whole range of issues involved in the welfare
16 system in this state, we're going to try to encourage personal
17 responsibility and emphasize the partnership that the states
18 have with individuals in order to make that public support
19 system work.

20 Also in areas such as Developmental Services,
21 Rehabilitation, Mental Health, I think the funding that we have
22 continued there shows our commitment to promote and assist
23 people in reach their full potential. And I think we have to
24 continue that perspective.

25 In closing, it's clear that we have to make
26 incredibly difficult choices this year as we did last year.
27 The resources have declined dramatically, and the choices
28

1 within the Health and Welfare areas are becoming more and more
2 difficult.

3 I think it's also something that I recognize, that
4 these choices are central to our character, and they're central
5 to our compassion as we look at individuals within our society.

6 We must work collectively, be smart in the use of
7 our resources and talents to achieve the best outcomes for
8 children and adults who need services from our area.

9 I appreciate the leadership that the Legislature
10 has shown in the past, and we've had many successes in trying
11 to improve services. And I look forward to working with you in
12 the future as we try to solve the very difficult challenges
13 that we have before us.

14 I believe that the fiscal and program policy
15 background I have will be important as we mutually explore
16 every option available in order to make sure that essential
17 public services are maintained.

18 I'd be pleased to answer any questions you might
19 have.

20 CHAIRMAN ROBERTI: Thank you, Mr. Gould.

21 Any questions? Senator Mello.

22 SENATOR MELLO: I had a chance to meet with him and
23 work with him during the past ten months or so. I've been very
24 impressed with his operation there.

25 One of the concerns I expressed to him is about the
26 Director of the Department of Aging has not been chosen for
27 some 14 months, and that's creating a lot of problems with
28

1 lacking someone there who's really in charge of the Department.

2 You may wish to comment further on what you think
3 the chances are for getting someone in that position very soon.

4 MR. GOULD: Well, Senator, I share your interest in
5 filling that position as quickly as possible. I'm working
6 closely with the Governor's Office as we review applicants, and
7 I think we have some very qualified candidates. I hope to be
8 able to join with the Governor in announcing the Director of
9 the Department of Aging very quickly.

10 My concern is that the aging community, as they see
11 no Director being appointed there, they might interpret that as
12 a lack of interest in the area, and that is certainly not the
13 case. I hope we have demonstrated, as we've worked together,
14 our interests in that area, and we want to move very quickly
15 and complete that appointment.

16 SENATOR MELLO: Thank you.

17 The other thing is, we talked briefly also about
18 Medi-Cal, and I'm happy to hear you're talking about revamping
19 the whole system to get into a managed care program. But I
20 showed you some of the comparable billings that are made by
21 providers.

22 I get more complaints from people, the providers,
23 who have a hard time getting their claims settled, you know,
24 through your Department. And that is one category that really
25 has to be changed, the uniform billing system, or something
26 that would -- or even get into electronic billing like they
27 have up in Canada, where they do it by computer modem and have
28

1 a direct deposit system.

2 MR. GOULD: Senator, your point's well taken, and
3 the illustrations you showed me, I think, were indicative of
4 the kind of problem we have.

5 We are exploring the question of uniform billing
6 and other ways to achieve savings and just to reduce the
7 paperwork that goes on. So, I think we need to be very smart
8 about how we do that.

9 There's no sense in having a very cumbersome system
10 that changes provider to provider, so I think we need to work
11 in that area.

12 SENATOR MELLO: A couple of my colleagues are not
13 here, but Senator Alquist asked me that I ask you about the
14 Ward Valley low level radioactive waste disposal facility. He
15 wrote a letter to the Governor asking that it be made
16 operational by January 1, 1993 deadline.

17 I guess you're going to play a major role in
18 getting that operational. Do you wish to comment on what you
19 think the chances are?

20 MR. GOULD: Well, we are looking very carefully at
21 the issue of Ward Valley. Low level radioactive waste is
22 primarily medical waste. It's something that has had a long
23 history.

24 I think the legislation initially in California
25 that discussed Ward Valley started in 1980. Senator Alquist,
26 in 1983, carried legislation that talked about siting
27 processes.
28

1 We are looking very carefully at that issue. We
2 have had a great many public hearings to get testimony. We're
3 looking at that information because I think everyone looks at
4 this issue and wants to make sure that California has moved
5 responsibly yet cautiously in terms of implementing it.

6 So, we are looking at it. We're assessing the
7 issues of liability. There's issues of the construction of the
8 site itself, making sure that all aspects of moving forward are
9 handled well.

10 So, we are paying a great deal of attention to it,
11 and we will be moving forward once we've gotten comfortable
12 that all issues have been resolved.

13 SENATOR MELLO: Will that be in place by January 1,
14 I believe, of '93?

15 MR. GOULD: That's -- I wouldn't want to commit.
16 We're certainly looking at that. I don't know if we're going
17 to be able to meet that, but we're looking at that.

18 SENATOR MELLO: Is that your target date?

19 MR. GOULD: That's a target date, and it's a very
20 important one. The issue has been complicated in that there is
21 a lawsuit currently at the U.S. Supreme Court level that is
22 looking at the federal law that really started the whole
23 process in terms of siting requirements for low level
24 radioactive sites throughout the nation. So, we're assessing
25 the implications of that lawsuit because that just recently
26 developed, and that's at the U.S. Supreme Court level.

27 SENATOR MELLO: Another question from another
28

1 colleague inquires about whether the Department has a
2 county-wide affirmative action plan for the inclusion of women
3 and under-represented minority males?

4 MR. GOULD: In the -- I'm sorry, Senator?

5 SENATOR MELLO: Do you have an affirmative action
6 plan throughout your Department --

7 MR. GOULD: Absolutely. In looking at affirmative
8 action, we made it very clear to the Directors from the start
9 that we wanted them to move towards a balanced workforce, and
10 that's been something that has been consistent.

11 Over the past year, through the budget reductions,
12 unfortunately, the Health and Welfare Agency has lost many
13 employees. But as a net result, actually the affirmative
14 action profile of the Agency itself has improved. And I think
15 that you see that both black employees as well as Hispanic
16 employees have increased as a percentage of the overall
17 workforce within the Health and Welfare Agency.

18 SENATOR MELLO: Are you up to parity now with the
19 percentages of each category?

20 MR. GOULD: No, Senator, we're not.

21 Currently -- I'll get the specific figures for you.
22 In terms of Hispanics, we have moved from 15.2 percent to 15.6
23 percent; and in terms of black employees, from 12.7 to 13.1, so
24 we are in terms of black employees. We are still below parity
25 in terms of Hispanic employees. And as we move towards the new
26 Census figures, clearly we're going to have to have additional
27 efforts in order to balance that.

1 In terms of Asian employees, we do -- we are above
2 labor force parity at 6.1 percent, and for disabled we're right
3 at labor force parity.
4

5 SENATOR MELLO: What about the level at the
6 management-type positions?
7

8 MR. GOULD: Yes. We have again, through the
9 reductions, we have also lost a great many career executive
10 assignment positions, so we've reduced those. About 22 we have
11 lost this year.
12

13 But again, we have made an increase in terms of
14 black management at the career executive assignment level.
15 We've moved from 10.1 percent to 12.8 percent, with labor force
16 parity being 6.6 percent. And for Hispanics, we have stayed
17 basically the same. We're 13.5 percent, so there's room for
18 progress in that area.
19

20 SENATOR MELLO: And the last point raised is
21 regarding appeals. It's indicated that the appeals process
22 should be restructured to make it accessible to providers. I
23 guess that's where there has been licenses revoked, and I don't
24 quite understand the question, perhaps, but I'm sure you do.
25

26 Within your Department, there must be -- is there
27 an appeal process that providers can look for to review their
28 revoked licenses?
29

30 MR. GOULD: Yes, sir, there is.

31 One of the things in the Community Care Licensing
32 area, it's a very difficult area. We license over 88,000
33 facilities.
34

1 We have made a number of major changes to the way
2 we're doing licensing activities in this state, and we do
3 believe it'll be more responsive to providers if they have
4 concern regarding any action or any action taken against that
5 facility. We are also letting them be more responsive of any
6 changes so they can be responsive to that. So, we've opened up
7 the process.

8 We're also going to try to intervene earlier within
9 facilities that are having problems to try to provide them with
10 support and counseling so they can fix those problems without
11 looking at it from a negative, penalty standpoint, but more to
12 try to work with the providers so they can be successful.
13 Because we have so many good providers who are trying to
14 provide adequate care for children in particular throughout
15 this state, so we do have improvements in the process.

16 SENATOR MELLO: Thank you very much.

17 CHAIRMAN ROBERTI: Senator Petris.

18 SENATOR PETRIS: I have two or three subjects now,
19 and then later we'll get back to some others after there's
20 testimony.

21 I have to say I'm also impressed with Mr. Gould's
22 approach to this job. I've been on some panels with him
23 regarding health care, for example, and I like his style and
24 his approach.

25 The question that I have is, you work under
26 directions from the boss, and he lays down the policy that
27 carries out our policy. There's some questions and concerns
28

1 have about that.

2 First is health care. As you know, as we've sat
3 together in some of these panels, there are close to 6 million
4 people in California without any health care coverage, and 87
5 percent of them are full-time employees. They work, but their
6 employers just can't afford to provide insurance for them.

7 The Governor has had some incremental
8 recommendations here and there. I haven't heard any clear
9 expression of a comprehensive program that will take care of
10 that so that we have health care access for everybody in the
11 state, and that we have long-term care. You mentioned you've
12 been working on long- term care.

13 I'd appreciate your comments on both of those.
14 What, if any, program is being recommended for long-term care
15 in view of the fact that only about one percent of the private
16 policies provide any? And the second one would be on overall
17 health access.

18 MR. GOULD: Let me try the long-term care issue
19 first.

20 One of the things we're going to continue to work
21 on is the question of private insurance. We've got a Robert
22 Wood Johnson grant to work with California specifically in
23 terms of trying to design insurance models that can work in
24 concert with the Medicare structure, so that we don't have to
25 impoverish people in order for them to gain access to
26 appropriate health care. That there can be, kind of in that
27 intermediate stage, where people can use private health care.
28

1 I think you're exactly right in terms of its
2 utilization in the past. It has not been successful, putting
3 people in a position where they really do have to spend down so
4 dramatically in order to get adequate health care.

5 Given this grant, we're going to work aggressively
6 in terms of trying with the insurance industry and with
7 providers and consumers to look at methods in which we could
8 hopefully construct a better insurance model to try to bridge
9 that gap, because it is an area that I think we have to
10 recognize. We have an aging population that's going to deserve
11 essential services, so we have to look at trying to bridge that
12 area. And that's going to be a primary focus area for us.

13 SENATOR PETRIS: Have you seen anything encouraging
14 yet out of the insurance industry?

15 MR. GOULD: Well, it's too early to say I'm
16 encouraged by it. I think they are interested. I think they
17 recognize that it's an area that needs to be served, and that
18 something has to be done.

19 And we feel that this is a way we can work within
20 the existing system to have a success, because in the absence
21 of that, we're going to have to look at different models and
22 approaches to provide better services.

23 So, I'm encouraged that we can work with the
24 insurance industry.

25 SENATOR PETRIS: Well, I hope you can work
26 something out. It just seems to me, having studied this for
27 sometime -- and I don't want to go into a debate on this here
28

1 and now -- but I'm not so sure that's the right mechanism.

2 There're good people in the insurance industry, but
3 the problem is such that it forces good people to do some
4 awfully bad things, and we all get complaints about it. The
5 better known providers, including Blue Cross and Blue Shield,
6 we have complaints all the time. They just pull the cord on
7 people, yank coverage at the critical time. And this God-awful
8 pre-existing condition is still out there. The people who
9 really need the medical care are automatically eliminated by
10 not even being given a policy. Once they get in, they spend an
11 awful lot of time searching for loopholes to exclude the
12 coverage, and thereby save the company money.

13 Is that because they're a bunch of evil people?
14 No. They follow their cost accountants, and the cost
15 accountants say, "Hey, if you don't chop here, and here, and
16 there, you're going to go broke."

17 That's why I raise the fundamental question, and
18 I'm not asking you to answer it here. But the fundamental
19 question to me is, is that the right mechanism? Is that the
20 right institution that we should entrust the billions of
21 dollars that are spent for health care, to bring that money
22 back to the people who pay it in order to get proper coverage?

23 And the people you mentioned are not even in the
24 worst shape. They're the second group. The first group has no
25 coverage at all; the second group is under-insured. They just
26 -- these are businessmen. They think they have coverage, but
27 they find they have to spend down. I think you described that
28

1 problem very accurately.

2 Let me go on to welfare reform. Part of it's in
3 the budget this year, and part of it's in the initiative that
4 the Governor has proposed. I don't know whether you worked
5 with him on that; I supposed you had a certain amount of input.

6 I'm troubled by the drive to reduce the grant and
7 call it reform. It suggests that everybody on that grant
8 doesn't belong there or is getting too much money and ought to
9 be reduced.

10 Now, what is the current grant for a women with one
11 child on welfare? Do you remember that number? Is it 680 or
12 690?

13 MR. GOULD: Usually what people talk about is a
14 family of three, being \$663, which is a woman with two
15 children.

16 SENATOR PETRIS: All right, and if the proposed
17 cuts are put into effect, what would the amount of the grant
18 be?

19 MR. GOULD: I believe the first stage would be --
20 for the first six months, that grant would move down to \$597 a
21 month. And basically, that -- it's kind of an across the
22 board, all grants would be reduced by 10 percent.

23 SENATOR PETRIS: I had somebody do some checking
24 today for rentals in Oakland, where I live, and in Sacramento.

25 Now, in Oakland, for one bedroom, the cost ranges
26 from \$425 to \$525, and they can't get into public housing
27 because the list is so long they have to wait and wait. For
28

1 two bedrooms, which I assume you'd need for a woman with two
2 children, the range is from \$600 to \$650 a month.

3
4 Now, what's a woman supposed to do if that's the
5 condition in one of the major metropolitan centers? What's she
6 supposed to do for shoes, clothing? Food stamps, I guess, they
7 can get to help with the food, but there's an awful lot of
8 other things that are needed.

9 What does the Governor have in mind to tell these
10 women with two children -- we won't even go into three and four
11 children, but two children -- what's she going to do? Go out
12 and get a job as a high tech. expert in Silicon Valley? What's
13 she supposed to do?

14 MR. GOULD: Senator, your question is a good one,
15 and I think when we've look at the system in California, what
16 was structured over time is a circumstance in which there is
17 basically no regard for people assisting through work in
18 support of their family.

19 The structure of the welfare system in California
20 currently provides that if you earn income, basically it's
21 deducted from your grant. I don't believe we've created an
22 incentive for people to assist in their family's support.

23 SENATOR PETRIS: Well, we had that for awhile. We
24 had the working poor. They were allowed to be on welfare, and
25 they were encouraged to go out and get a job and earn up to a
26 certain amount.

27 Ronald Reagan wiped that out. He fought it as
28 Governor, and he destroyed it as President. And that still

1 seems to be the prevailing view. We haven't been able to make
2 enough of a change.

3 Are you telling me that the Administration is
4 contemplating something along those lines to change it?

5 MR. GOULD: Exactly. In fact, through legislation
6 which came through last year and the Governor signed, we're
7 going to try and re-institute a situation where additional
8 earned income can be retained. Basically not to penalize a
9 person for trying to assist in the support of their family.

10 Actually, through our proposal, individuals who are
11 able to go out and get part-time work will be able to not only
12 cover the cost of the reduction and to get back that additional
13 earned income and be able to keep it, but actually to go above
14 what the current law allows in terms of existing retained
15 income. So you'll actually have more disposable income.

16 What we're trying to do is to encourage, and in
17 many cases this will be part-time work. It may be something
18 like day care; it may be providing in-home supportive services
19 to people who are disabled or the aged, so that they can assist
20 in the support of their family.

21 What we're trying to do is to bring back that,
22 because I think developing job skills, creating that role model
23 within the family is a positive thing.

24 But our current structure in California has really
25 taken away the benefit of people working, and I think we find
26 less than 8 percent of people on welfare currently report any
27 earned income. We'd like to turn that around and encourage
28

1 them to aid in the support of the family. We think that's a
2 better model for the future.

3 SENATOR PETRIS: Are there bills pending now on
4 that?

5 MR. GOULD: Yes, sir.

6 SENATOR PETRIS: That's very good news.

7 Another area is the children's initiatives, which I
8 think have some great merit to them. But here again, I'm
9 nervous about the financing. Money is taken away from other
10 vital needs to pay for that, and again we're put in a position
11 of choosing between welfare grants and schools.

12 It seems to me that both of those are absolutely
13 necessary. Prop. 99 money is being diverted, for example, from
14 the original purpose to another very good purpose, but it
15 reduces the amount available for the original mission that was
16 approved by the people.

17 Could you comment on that? It's a derailing of
18 funds from one. Robbing Peter to pay Paul, I guess is what I'm
19 trying to say, when both Peter and Paul need the money.

20 MR. GOULD: Senator, I wish we had far more
21 resources. The kind of recession that California has been in,
22 and what that's done in terms of state taxes, in terms of the
23 diminishing resources we have to fund essential programs, makes
24 both of our jobs far more complicated and very difficult
25 choices.

26 I look at some of the choices that we have to make,
27 and they seriously concern me in terms of what it's going to
28

1 mean.

2 But at the same time, we have to be -- recognize
3 the dilemma and try to have to think through what are the best
4 choices for the future and for the children that, as you
5 mentioned, we're making hard choices for.

6 As I look at some of the revenue estimates that
7 have most recently come out of the Commission on State Finance,
8 which is not part of the Administration, painting even a
9 bleaker picture than the Governor assessed in terms of where
10 the recession was, and how the economics were going to be,
11 there's no encouragement there either.

12 SENATOR PETRIS: Their figures are probably more
13 realistic.

14 The problems we're having are aggravated by the
15 fact that the revenue projections were a little too optimistic.
16 The need projections were a little too low, so we had a double
17 whammy there, and that's why we're fighting over meager
18 dollars.

19 Could you tell me a little bit more about the
20 safety net for hospitals, 800 million from the federal
21 government? I think that's terrific.

22 What does that mean?

23 MR. GOULD: Well, basically what we've structured
24 is a program where individual disproportionate providers,
25 meaning providers what are providing care to the lowest income,
26 can apply for -- put their money into a pool. Basically
27 they're assessed a fee that comes into the state. We match
28

1 that money with federal resources, so we --

2 SENATOR PETRIS: Who pays the fee?

3 MR. GOULD: It comes from these hospitals, the
4 disproportionate provider public hospitals. Some of them are
5 county hospitals; others would be with the university system.

6 Those resources come into the state. We include
7 those within our state Medi-Cal plan. We tell the federal
8 government that we have additional resources from the local
9 level that we need to match, where the federal government will
10 put up its half. The federal government puts up \$800 million,
11 and then we distribute that money out to all disproportionate
12 provider hospitals. That includes children's hospitals and
13 others that are not initially assessed because they're not
14 governmental entities.

15 This is really going back to the old Medi-Cal
16 models where we actually had local participation in the
17 program. And so, we're really going back to a share of costs
18 with local jurisdictions in the Medi-Cal program.

19 And I'm pleased that, as this was an issue that was
20 brought before Congress because it is increasing dramatically,
21 obviously, the cost on the federal side, the California
22 approach and the fact that we are putting the money back into
23 the disproportionate hospitals was really used as kind of the
24 model through Congress as they illustrated how states can use
25 the money appropriately. If we are going to get additional
26 federal resources to supplement safety net hospitals, let's
27 make sure they use it for that, and that it's not just merely
28

1 captured and put into the General Fund.

2 So, we've been consistent in terms of how we've
3 approached it in support of those hospitals. And I think it's
4 sorely needed, because the safety net structure really needs
5 it.

6 SENATOR PETRIS: How does the 800 million compare
7 with the actual need? I imagine the amount recommended by the
8 hospitals is a lot higher than that. What's the upper number?

9 MR. GOULD: I don't know that I could even give you
10 a figure. Obviously, there's a great deal of charity care and
11 other services being provided in the hospital structure
12 throughout California, but this is a substantial shot in the
13 arm in terms of providing support.

14 SENATOR PETRIS: Is there some way we can find out?

15 MR. GOULD: Absolutely. I'll be glad to give you a
16 sense of that.

17 SENATOR PETRIS: The 800 million is an awful lot of
18 money, but if the need is 6 billion, it's not quite as
19 impressive or dramatic.

20 The other question I have is, what assurance do we
21 have that the feds are going to pay the bill this time? We're
22 still waiting for them to honor their commitments in a few
23 other areas. Is this part of a steady cash flow, or is this a
24 new one we're going to have to fight to get?

25 MR. GOULD: Well, I believe we've got a commitment
26 that will hold. It's something that we spent a great deal of
27 time going back to Washington, talking to Members about. We
28

1 had great cooperation from counties as they tried to pursue
2 this with us, Los Angeles County in particular.

3 And I believe that we will be successful in keeping
4 the federal government commitment on this one.

5 But I share your concern. We always want to make
6 sure we've got the check in hand.

7 SENATOR PETRIS: I'd like to go over into another
8 area having to do with the ever-present and growing problem of
9 radioactive waste.

10 There have been some letters directed to you from a
11 couple of Members of Congress and others, inquiring about the
12 designated dump. Where is it, down in Needles?

13 MR. GOULD: About 15 miles outside, yes.

14 SENATOR PETRIS: Nearby.

15 MR. GOULD: Ward Valley.

16 SENATOR PETRIS: And the awarding of a contract to
17 U.S. Ecology, and there are certain questions that have been
18 raised there that haven't been answered. Maybe I can repeat
19 the questions.

20 MR. GOULD: Okay.

21 SENATOR PETRIS: The first one was that the track
22 record of U.S. Ecology in two other states seems to have been
23 tainted with a great deal of suspicion as to whether they can
24 carry through the contract. They have their defense that says,
25 well, it was the state's fault in each case, and I can
26 understand that.

27 But it makes people kind of uneasy to have this
28

1 group come in to take care of a very serious problem for us,
2 which may, in turn, result in other states using the same
3 dumping under the federal law.
4

5 I wonder if you could enlighten me on a couple of
6 questions that have been raised. Congressman Miller was one
7 of those. I guess you're familiar with the letter. I'll quote
8 from Congressman Miller's letter. The first one is whether the
9 Department conducted any independent review or analysis of the
10 waste stream data provided by this company, U.S. Ecology?

11 It's a nice name, but I don't know if they live up
12 to their name.

13 So, he's asking for some documents relating to that
14 analysis. Now, the letter's very recent. I'm sure you haven't
15 had a chance to answer it.

16 MR. GOULD: I have not seen it.

17 SENATOR PETRIS: And the other is, describe the
18 methodology and data that U.S. Ecology used to produce the
19 estimate of the amount of tritium, t-r-i-t-i-u-m?

20 MR. GOULD: Yes.

21 SENATOR PETRIS: And they wanted -- one of the
22 reasons he's looking into this is that others tell him that
23 this kind of waste comes from pharmaceutical operations, and
24 that a very high percentage can be recycled. They shouldn't
25 even be going into this dump; it ought to be recycled, and that
26 perhaps should be a requirement.

27 If you're using stuff that's dangerous that can be
28 recycled, you ought to just keep on recycling it and not

1 dumping the dangerous part somewhere else and then bringing in
2 more dangerous material for your production process.

3 Do you have any comment on that? Have you had a
4 chance to study that at all?

5 MR. GOULD: I have not looked at that issue.

6 We have had some correspondence with the
7 Congressman.

8 The issue of the firm, U.S. Ecology, is one that's
9 been under review for sometime. I believe they won the bid, if
10 you will, back in 1986, if my memory is correct. And from that
11 period of time -- it's actually 1984 they were selection --
12 there have been a whole series of reviews as to the firm's
13 solvency, its approach to doing business.

14 There were problems in prior sites. I think in
15 Kentucky and Illinois they had some problems in terms of how
16 the sites were administered.

17 Any liability problems they did fully back up.
18 They have been much more successful in terms of operating a
19 site in Nevada, which is much more similar in construction to
20 the site proposed in Ward Valley. Ward Valley is, obviously,
21 very deep in the desert, and it's much more similar to the
22 design and the approach used in Bady, Nevada, which is very
23 similar construction. I think there's been a solid record of
24 operation for some period of time, nearly 20 years, as I
25 recall, of that facility by the same operator.

26 So, I think when we look at what occurred, both in
27 Illinois and Kentucky, we have learned form that, but we're
28

1 also learning a great deal from more successful operations in
2 Nevada.

3
4 SENATOR PETRIS: One of the questions they raise is
5 whether your people in the Department did some testing below
6 the 100-foot depth. They say this is good down to 100 feet,
7 and it won't -- it'll dissipate or do whatever it does that's
8 safe.

9 But they're raising the question, how do you know
10 there isn't some contamination below the 100-foot level? And
11 when you examine that, that's one of the questions I'd like to
12 have you look out for.

13 And the other is a question of liners. There's
14 several agencies that recommended the use of liners. These are
15 the Regional Water Quality Control Board for the Colorado River
16 Basin, California's Integrated Waste Management Board, and the
17 California Water Resources Control Board, and EPA Region 9.
18 All of them recommended liners be installed in Ward Valley.
19 They're not being installed.

20 And the question is, is the Department on top of
21 that? Is it done with the approval of the Department, or is
22 the Department going to go in there and examine this question
23 of the liners? Do you feel that it's an important safety
24 measure, so that even if the other things fail, the liners will
25 add the additional protection?

26 MR. GOULD: That is a question that's been raised.
27 And it's all part of the public input that's really gone on for
28 a period of years. I think that issue is being assessed, along

1 with all of these, because they all have to do with liability
2 and any potential hazard from it.

3 SENATOR PETRIS: That's one of the problems, the
4 public's liability.

5 MR. GOULD: That's correct.

6 SENATOR PETRIS: They seem to feel that the
7 Department has rejected the liners. I'm not certain as to
8 whether that's conclusive.

9 MR. GOULD: Well, I think there are reservations
10 about the liners, and that's one of the reasons why we're
11 working very closely with the Department to understand their
12 perspective in terms of how it actually might capture the
13 material and actually create a more potential dangerous hazard
14 in terms of how the liner might operate than without a liner.
15 So, that is clearly an issue we're working with the Department
16 to assess.

17 But that's all part of the public input that we've
18 received, and again, we're not taking that lightly. It's
19 something we should look at closely.

20 SENATOR PETRIS: They also point out that the
21 Lawrence Berkeley Laboratory has developed a different process
22 for recycling that seems to be much safer than the one being
23 considered down there at Ward Valley.

24 I'd appreciate it if you'd have somebody show you a
25 comparison of those two.

26 MR. GOULD: Okay, be glad to look at that.

27 SENATOR PETRIS: Well, I guess I've taken enough
28

1 time for a while. I'll be back before it's over.

2 CHAIRMAN ROBERTI: Before we take a break, I would
3 like to see how many people choose to testify either in support
4 -- support for starters, and opposition?

5 We're going to take a break and be back in ten
6 minutes.

7 [Thereupon a brief recess was taken.]

8 CHAIRMAN ROBERTI: The Committee will reconvene.
9 We were in the process of asking for support and
10 opposition. The people in support, please come forward and
11 identify yourselves.

12 MS. GOLDEN: Yes, thank you, Mr. Chairman and
13 Members.

14 For the record, I'm Sherrie Golden, representing
15 the California State Employees Association.

16 I must tell you, I'm delighted to be here
17 personally because Mr. Gould is also a personal friend.

18 CSEA, as you know, does not take a lot of support
19 positions on Governor's appointees, and especially at this
20 level. But I must tell you that we're very, very happy to be
21 here.

22 CSEA and Mr. Gould go back a long time. He's been
23 around labor organizations and unions since his early career in
24 labor relations personnel, and also when he was with the
25 Department of Finance.

26 His open door policy and his approach to try to
27 resolve problems is very, very refreshing in the arenas that we
28

1 work in when we are confronted with so many problems, so many
2 people in high places, in high level positions, that really
3 don't want to take the time to look at the problem and see if
4 there is a way to resolve it.

5 We've always had a very, very positive response
6 from Mr. Gould.

7 A couple of years ago, when he was with the
8 Department of Finance, PERS came to us because they had been
9 turned down by Agency for a few additional positions they
10 needed in areas where services were greatly lacking to the
11 members of the system, where they had a lot of backlog. We
12 went to see Mr. Gould and discussed the issue with him, and
13 made it very clear that we weren't there just representing
14 CSEA, trying to get people jobs. We were there representing
15 the recipients of the system who were having great trouble
16 getting some services, and that they very much, in fact, needed
17 these additional positions.

18 He interceded in -- for us, and during budget
19 deliberations PERS was able to get some more additional
20 positions that would make it easier for them to get the job
21 done.

22 So, it's situations like this that make us very,
23 very happy to see someone like Mr. Gould in this position.
24 Health and Welfare is a tremendous agency with a lot of
25 problems, and we have a lot of people over there. And there're
26 going to be a lot of problems.

27 And I think his background, because he's had such
28

1 great experience in all arenas, he can look at a problem from
2 all perspectives: from the Administration's, from the
3 employee's, from the Legislature's. And I don't think it's
4 going to be slanted. It's not going to be, "Well, I have to
5 look at it just from the Administration's position." I think
6 he's going to be very balanced.

7
8 And for that, we are here supporting him and ask
9 the Senate Rules Committee to confirm.

10 CHAIRMAN ROBERTI: Thank you very much, Ms. Golden.

11 Are there any questions?

12 Anybody else in support?

13 MR. SKOIEN: Mr. Chairman, I'm Charles W. Skoien,
14 Jr., a consultant at Community Residential Care Association of
15 California. I've been in this industry since about '72, and I
16 think Mr. Gould has shown since his appointment at least the
17 door is open to us. In the last three or four months, he's
18 called all the provider organizations in to at least discuss
19 some of the issues and the problems that have faced this
20 industry.

21 It's an industry that's, in quotes, "a can of
22 worms". You've got one-bed facility, 100-bed facilities, and
23 there's many problems.

24 We believe in enforcement. We believe in
25 compliance. We also believe in consultation, and most of all,
26 we believe that the consumer in these facilities, the special
27 people, should be given a home with dignity and respect.

28 We support Mr. Gould's confirmation.

1 CHAIRMAN ROBERTI: Thank you very much.

2 Is there anyone else? Any questions?

3 Anyone in opposition? Please come forward.

4 MR. BRAVE: My name is Ralph Brave.

5 Mr. Chairman and Members of the Committee, thank
6 you for letting me testify.

7 I've never testified before, so I'm a little
8 nervous, excuse me.

9 I'm here today representing Americans for a Safe
10 Future and a coalition of other groups which are concerned
11 about Ward Valley.

12 What I'd like -- our concerns, as many of you know
13 already, is that the project is being pushed forward by
14 Mr. Gould and the Administration without proper attention to
15 many of the complex issues involved, such as liability and
16 public safety. And I think that that part of the problem was
17 evident in Mr. Gould's responses to Senator Petris's questions.
18 They were responses that were incomplete, were simply ignorant
19 of the issues.

20 Mr. Gould, for example, stated that 90 percent of
21 the nuclear waste going to Ward Valley would be -- not 90
22 percent, but it would primarily be medical. This is simply not
23 true. As any study of the waste stream would show, there is
24 some medical waste, but the majority of it is not medical; the
25 majority of it will be from the nuclear power industry and
26 related utility operations.

27 The question -- one of the questions has to do
28

1 simply with the objectivity that Mr. Gould could bring to the
2 Ward Valley issue as the Secretary. As you're aware, many
3 individuals, groups, and Legislators have been asking tough
4 questions of DHS and of Mr. Gould. And the answers in general
5 have been slow, shallow, or incomplete, whether regarding
6 liability, the waste stream, or the status of the land
7 ownership of the project.

8 Furthermore, DHS has the right to grant an
9 adjudicatory hearing, for instance, in regard to the very
10 serious details of the project. When asked to do so, however,
11 by Legislators and public interest groups alike, the Agency
12 refused.

13 When there's a serious disagreement of experts in
14 the field over these kinds of issues, especially regarding
15 anything radioactive, it would seem appropriate to hold such a
16 hearing in the interest of getting to the bottom of the issue
17 and learning the truth.

18 The State of Nebraska, for example, held detailed
19 summer-long hearings over this very issue involving their
20 designated licensee, U.S. Ecology, the same company at issue
21 here, for this very reason.

22 The State of California stands to suffer serious
23 liability, health, safety, and environmental consequences were
24 this project to actually move forward. And these consequences
25 due to the highly dangerous components in the low level waste
26 stream -- and low level is something of a euphemism, because
27 some of the material has half lives of up to four-and-a-half
28

1 billion years. These components will plague future generations
2 long after accountable individuals and agencies are nothing but
3 a dim memory.

4 In addition, environmental documentation should
5 have included alternatives to the project but failed to do so.
6 As with any hazardous substance, reduction of waste and
7 aggressive studies on clean, non-nuclear alternative technology
8 should have been but were not pursued. And I think that was
9 evident today under the questioning of Senator Petris and Mr.
10 Gould's responses. Alternative methods of storage should have
11 been investigated.

12 Furthermore, there is the question of Mr. Gould's
13 relationship with the nuclear waste industry. In an October,
14 1991 letter from the P.R. firm Winner/Wagner and Associates to
15 the nuclear industry lobbying group Cal Rad, a meeting is
16 specifically mentioned in order to, quote,

17 "thank Gould for his informed and
18 articulate support for the
19 project.",

20 unquote. And to, quote,

21 "invite Mr. Gould to join us at the
22 editorial boards to express his
23 thorough analysis of the safety and
24 need for the Ward Valley project,"

25 unquote.

26 I have a copy of the Winner/Wagner letter here with
27 the statements regarding Mr. Gould and their work with him.
28

1 You'll find it on Page Three of the letter.

2 Several questions, of course, are raised regarding
3 the level of intimacy in the relationship between Mr. Gould and
4 the nuclear waste industry and their lobbyists. One, has
5 Mr. Gould openly supported this project despite outstanding
6 unanswered questions? Two, has Mr. Gould met with industry
7 representatives? He he also met with public interest
8 individuals or public groups opposing the project? And three,
9 has Mr. Gould attended any editorial board meetings with Cal
10 Rad Forum and/or U.S. Ecology representatives to express his,
11 quote, "thorough analysis of the safety and need for the Ward
12 Valley project," unquote.

13 While obviously at this time we cannot say that
14 Mr. Gould acted inappropriately, there is certainly the
15 question of the appearance of impropriety. And I'm sure that
16 Mr. Gould would prefer to dispense with this issue now.

17 Indeed, Mr. Gould should be questioned at length
18 about his current and past relationship with the nuclear
19 industry in general, and U.S. Ecology's lobbyist, Mr. Craig
20 Fuller of Hill and Knowlton, who's been hired to lobby on this
21 issue and apparently lobby Mr. Gould as well.

22 In conclusion, California citizens deserve the best
23 possible candidate for the important office of Secretary of
24 Health and Welfare. Thank in advance for your efforts to
25 ensure that this does indeed take place.

26 Thank you.

27 CHAIRMAN ROBERTI: Thank you very much.
28

1 Senator Mello.

2 SENATOR MELLO: You seem to know a lot about this
3 incident, about this activity.

4 What is your solution to this problem?

5 MR. BRAVE: Well, I think that there are
6 alternatives to Ward Valley. Number one, there are existing
7 alternative technologies for recycling some of the most
8 dangerous waste, and primarily that coming from the medical
9 industry. And there is no reason to put it into the ground.

10 But as far as I know, and it seemed apparent from
11 Mr. Gould's responses to Senator Petris, this issue hasn't even
12 been looked at by the Administration.

13 SENATOR MELLO: But in recycling, do they make the
14 radioactive material neutral? Do they neutralize it?

15 MR. BRAVE: Some of it is neutralized, yes.

16 SENATOR MELLO: You say some. There is some that
17 is not neutralized?

18 MR. BRAVE: Right, there's a very small proportion
19 which could be -- which is not, you know, very small percentage
20 of the medical waste which could not be recycled but which
21 could be held, because it's so small, in on-site storage.

22 SENATOR MELLO: Thank you.

23 MR. BRAVE: Thank you.

24 CHAIRMAN ROBERTI: Anyone else? Any other
25 questions?

26 MR. BRAVE: Thank you again.

27 CHAIRMAN ROBERTI: Is there anyone else here in
28

1 opposition? This gentleman and then this gentleman. Please
2 come forward.

3 MR. LIM: My name is Nilrosino Lim. I am
4 representing the Filipino-American Care Providers of
5 Sacramento.

6 CHAIRMAN ROBERTI: Which providers?

7 MR. LIM: Filipino-American.

8 We are having around forty members right now, and
9 we would like to register our opposition to the confirmation of
10 the Russell Gould appointment on the ground that we are
11 suffering under CCL policies and implementation of those
12 policies as far as Filipino care providers are concerned.
13 Somewhere along the line, our rights as a citizen are not being
14 respected.

15 Due process, the appeal process is not being
16 followed. The obligation process is being dragged down to one
17 year to two years that we suffer. I don't know how much money
18 is involved in here. We paid the mortgages of the home until
19 after citation, and citation after another until after we get
20 the license. And aside from that, once we get the license, we
21 -- we were cited for small things, you know, and not uniformly.
22 There are those who want the kitchen closed, the evaluators,
23 and there are those evaluators who doesn't want the kitchen
24 closed. The gate's closed, and some of the evaluators want it
25 open.

26 There is no uniformity as far as these policies are
27 concerned, and we find it, you know, trying to look out for
28

1 something that's not there. You see it and you don't. And
2 that leaves us in a position where we don't know anymore how to
3 care for our clients.

4 And we look at Community Care Licensing as an
5 agency of the government that would be supporting us to upgrade
6 our services to the clients. Basically we spend 24 hours a day
7 and night, seven days a week with our clients, and we expect
8 some support. But we don't get support from any government
9 agency.

10 We lose our money. We don't have the right to
11 collect whatever due for board and care. I inquired from the
12 Legal Center here in Sacramento once. I had a client who owed
13 me almost 6,000 in room and boarding care rent. I asked
14 Licensing what can we do about this, if they can help us. The
15 lawyer can't help us either.

16 And in the process of appeal, they closed the
17 facility before they tried to schedule the hearing. And it
18 takes, I think, in my case it's seven months now I haven't been
19 heard by the Legal Department of Community Care Licensing.

20 So, as far as the other groups is concerned, they
21 have the same experiences and grievances.

22 And I thank you. We needed to be heard by this
23 body, because I think there must be some revision on the Title
24 22 and Title 17 that gives authority to Community Care
25 Licensing. And because of this, I think misdirection of
26 Community Care Licensing, I don't know whether it's in -- built
27 in in the regulations, or within the authority exercising
28

1 supervision over this Agency, it's not giving the right
2 direction.

3 Because basically, our concern is the clients. But
4 they are hindering us to give the best possible service to our
5 clients. By imposing citations they expect us to be janitor,
6 cook, security at night, accountant, dietitian, pharmacist to
7 dispense this medication. And yet, we are trying to cope up
8 with these duties, and we love this because it is our interest
9 and vocation. But they close our facility, disrupt the
10 relationship with our clients.

11 And one of them could have been, you know, could
12 have been accident, because I know that one of my clients just
13 wanted to go to the highways and kill herself. And when she
14 was removed from my facility, there was a danger. Up to now, I
15 don't know where she is. But before she run away from
16 California, I heard that she was in what they call New Mexico.
17 And I hope everything goes with her fine.

18 However, going to the opposition, I find the
19 connection of Russell Gould negligent in giving the right
20 direction for the agencies under his department.

21 Thank you, your Honor.

22 CHAIRMAN ROBERTI: Senator Petris has a question.

23 SENATOR PETRIS: What was the ground for suspension
24 of your facility?

25 MR. LIM: First, after citation, I filed my
26 application for more than a year, and they cited me without
27 appeal for minor things, like temperature water, which was
28

1 readily corrected.

2 The last thing that I can remember, and I thought
3 was the main cause of the closure, was the moving out of the
4 pool table from the living room. The evaluator wanted the
5 living room back, but since I have many clients and they always
6 want to use the living room as a pool table, so we moved the
7 sofa in my office and we up the pool table in there. And they
8 enjoyed it. They never complained about it, and they like it
9 very much there.

10 SENATOR PETRIS: You were suspended for that,
11 moving the pool table?

12 MR. LIM: Yes, that was the initial understanding I
13 had.

14 Then later on, after the closure, I was notified by
15 the Legal Department that I was charged accused of sexually
16 molesting my clients, all of them. And the basis of their
17 accusation is one written testimony of one client who was my
18 relative, and you could talk to her psychiatrist about the
19 matter. And they started having investigators talk to my other
20 clients, and you know, when they are mentally ill, they are
21 easily prone to change their mind. And the questions that the
22 investigators are asking them are so much, you know, leading,
23 "Don't you know that Mr. Lim raped everybody in that facility?"

24 And one of them is Kathy Seaton who almost is my
25 daughter. You know, she calls me Dad when her father died, and
26 she says, "No." But in the report, the investigator is, when
27 they say "No," and they cried. And they make it appear that,
28

1 you know there was something that happened.

2 You see, I don't know how much money is spent by
3 going around and talking to all my clients. However, I
4 appreciate that, so that, you know, all my clients could be
5 intact again.

6 SENATOR PETRIS: How many people in your facility?

7 MR. LIM: There were seven, sir.

8 SENATOR PETRIS: Isn't the normal procedure for the
9 Department to issue a citation and then give you time to make
10 corrections to whatever the problem is?

11 MR. LIM: I was expecting that, sir, but it didn't
12 -- it never happened to my facility. They just closed it
13 down, transferred all my -- without having the consent of my
14 clients.

15 My clients doesn't want to move out. They also
16 violated the rights of the client, too, the place where they
17 want to live.

18 As a matter of fact, most of them are -- who are
19 still here, comes around and calls by phone. They want to go
20 back.

21 SENATOR PETRIS: Where is that located?

22 MR. LIM: It's at 2942 and 2950 Soledad Way, off
23 Broadway.

24 SENATOR PETRIS: Here in Sacramento?

25 MR. LIM: Here in Sacramento, sir.

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN ROBERTI: Any further questions?
28

1 Thank you, Mr. Lim.

2 Someone else in opposition? Please come forward.

3 MR. DOBSON: My name is William Dobson. This is my
4 wife Ruth Dobson.

5 Up until a little over a year ago, we operated a
6 care home for the aged in Galt, 15 people. Until one day,
7 about 40 people at someone from Mr. Gould's office came down
8 and took the 15 residents away.

9 We pleaded with the lady who had been down, the
10 leader of the group. The leader of the group had come down a
11 week earlier, completely inspected our facility, gave my wife a
12 statement saying: no deficiencies.

13 And on the day when she came, the day when she came
14 with all these people, we knew -- we had no idea what she was
15 going to do there with all those people. All of our front
16 yard, all in our living room, even across the street in our
17 neighbors' yards, cars double-parked and tripled, or whatever,
18 here they are; here our people are.

19 She announced that she was going to take our
20 residents. And I said, "Wait a minute. What for?"

21 She said, "One of them accused your wife of
22 abusing a resident."

23 The incident referred to was one in which my wife
24 was carrying a tray from this patient's room. The patient
25 picked up a walking stick, a cane, and hit my wife from the
26 rear. My wife fell to the floor. One of the residents who
27 happened to be a Hall of Famer Olympic swimming coach, 80 years
28

1 old, pounced on the lady, broke some bones, and that was the
2 incident.

3 The police investigated. They talked to the
4 witnesses. They talked to our cook. They talked to other
5 residents eight or ten feet away who saw everything that
6 happened.

7 And yet, when I tried to explain this to the lady
8 who was in charge of the troops that day, who stormed in our
9 place, I said, "Well, look. The police came. They
10 investigated. They didn't do anything to my wife. They did
11 take this woman to Mental Health up in Sacramento from Galt."

12 My wife had done nothing to be closed down as she
13 was.

14 Before they left, and before they really got
15 started dragging the people out -- literally dragging them out
16 -- I said, "Who is your boss?" She said, "Fred Miller." I
17 said, "Let us talk to your boss because if all these people you
18 have here, you can interview every one of our patients. If you
19 find that any of them say that they have been abused, take all
20 the people. Conversely, if you find that none of them say they
21 have been abused out of 15 people, leave the people alone."

22 Several died after they took them away, but anyway,
23 I talked to Fred Miller. I told him the circumstances. I told
24 him the police had investigated; had done nothing to my wife.
25 And there was no abuse.

26 "Well, we got to take them out today by 5:00
27 o'clock."
28

1 I thought it was pretty stupid, but you know, he
2 had the power. He had signed the Temporary Suspension Order,
3 which is a vicious animal, if you gentlemen and ladies are not
4 familiar with it. It says whenever in the thought of God -- in
5 that instance Fred Miller -- he felt a violation had been
6 committed, he could suspend the license.

7 My wife had been in business for 15 years with the
8 care home. Never had any problems before.

9 After Mr. Miller told me that, I said, "Let me
10 speak to your lawyer." I happen to be a lawyer of some 30
11 years, and I thought maybe the lawyer and I could talk sense to
12 each other.

13 Just like lock-step, he says they got to take the
14 people out. With nothing, literally nothing to base their
15 decision on.

16 Certainly, Mr. Gould, I would hope that if you
17 become Director, you will seek to change the Temporary
18 Suspension rules to state that, as the Code of Civil Procedure,
19 Section 527 requires, before a restraining order may be issued
20 by a judge in California, both parties must have been notified
21 and given an opportunity to be heard by the judge who is being
22 asked to sign the restraining order.

23 Presently, these people have too much power,
24 because they don't have that requirement. This man signed in
25 his little office a Temporary Suspension Order and literally
26 put us out of business.

27 You see, when you cut off the paychecks of 15
28

1 people, you're paying \$4,000 a month on your facilities,
2 doesn't take but a month or two and you're gone unless you got
3 a heck of a lot of money. All on account of, I think,
4 stupidity.

5 All I asked the lady to do was to ask the people.
6 Those people wouldn't lie to her, 70 and 80 year old people.

7 Some of them literally had to be dragged from the
8 premises.

9 We also gave affidavits and all that sort of thing.
10 All to naught.

11 So, we were thrown out of the business.

12 Sure, I came down to get a restraining order from
13 the Superior Court the same afternoon, but it was a Friday
14 afternoon, and Presiding Judge Ford at the time said, "Well,
15 you'll have to notify the other side, come back Monday
16 afternoon," as I think the Department should have notified us
17 of their plans so we could have come before somebody, some
18 impartial decision-maker, to close us down.

19 That, you gentlemen and ladies, you have some
20 power about you, that must be changed. It gives too much power
21 to one man, to completely throw people out of business, I think
22 as the other gentleman testified to. No one man in America
23 needs that much power over other people. He wrecks their lives
24 by throwing them out of business. He disturbs the seniors and
25 others by giving these orders without any corroboration.

26 Our proposal is that before any of the
27 investigators' information from the Community Care Licensing is
28

1 acted upon, there must be some corroboration. That's all that
2 Mr. Miller must have acted upon in our case.

3 And I would hope, Mr. Gould, you wouldn't fall in
4 that trap. You probably don't know about it, but anyway --

5 SENATOR PETRIS: I have a question.

6 MR. DOBSON: Yes.

7 SENATOR PETRIS: As a lawyer you can answer. Is
8 there a legal remedy? Is there an appeal that lies with that
9 kind of an order? Was there one taken?

10 MR. DOBSON: We started it, Senator, but, you know,
11 trying to keep payments up on this place and our home, we just
12 couldn't hang -- I mean, we couldn't afford to. I mean, we had
13 no money.

14 SENATOR PETRIS: So there wasn't any legal process
15 at all?

16 MS. DOBSON: Your Honor, we were intimidated into
17 sending the license in by State Licensing.

18 SENATOR PETRIS: Is that Mr. Miller again? Did he
19 do that?

20 MS. DOBSON: Mr. Miller was not present, but it was
21 the State Attorney General's lawyers who I told they didn't
22 have to revoke my license because my morals, my upbringing, and
23 my training told me I didn't have to deal with scum bags that I
24 was dealing with that day, and I would mail my license to them
25 because they kept moving the goal post on me.

26 SENATOR PETRIS: Did they give you any written
27 document, other than -- I assume they had something in writing
28

1 regarding --

2 MR. DOBSON: Temporary Suspension Order, signed by
3 Miller, uncorroborated.

4 SENATOR PETRIS: Was there any other document
5 attached to that, any affidavits or complaints?

6 MR. DOBSON: Nothing else. They just came and took
7 the people with that Temporary Suspension Order.

8 SENATOR PETRIS: Did they send you any letters or
9 documents afterward --

10 MR. DOBSON: We met with --

11 SENATOR PETRIS: -- explaining the reasons?

12 MR. DOBSON: They listed those in the Suspension
13 Order, and one of them, the only -- really the only one, I
14 think, was alleged abuse.

15 SENATOR PETRIS: For that one incident?

16 MR. DOBSON: Yes, out of 15 years.

17 SENATOR PETRIS: Any questions by any of the
18 Members?

19 Did you wish to testify also?

20 MS. DOBSON: Your Honor, the only thing I have to
21 say --

22 SENATOR PETRIS: Could you give us your name,
23 please?

24 MS. DOBSON: My name is Ruth Dobson, and I have
25 been in the care home business for 15 years. Prior to that,
26 ten years with the federal government. Prior to that, five
27 years with the state government.
28

1 And the type of treatment that I received by
2 Community Care Licensing and the state investigator at the time
3 of my closing of my home, I am here after being traumatized for
4 one year under the doctor's care, to roll my sleeves up and
5 help write the language to change the laws if I have to.
6

7 If it doesn't do me any good, it's going to help
8 others. I do not want to go back into the business. I am ill
9 from the business, but I am willing to work with people to
10 write changes and help others so it won't destroy any more
11 other families like it has destroyed mine.

12 My husband's blood pressure went so high until it
13 affected his eye sight where he couldn't see out of his left
14 eye. It's an irreparable damage.

15 I have been under the doctor's care for one year.
16 Thank God I'm on my feet now, and I'm going back to work, but
17 by the grace of God, these laws must be changed.

18 SENATOR PETRIS: Tell us, if I gave you a pencil
19 and I said, "Write the changes that we need," what would you
20 recommend?

21 MS. DOBSON: I have them here, sir.

22 SENATOR PETRIS: Okay, let's hear them.

23 MS. DOBSON: The roles allowing Community Care
24 Licensing to issue a Temporary Suspension Order must be changed
25 to comply with Section 527 of the California CCP, which must be
26 followed to get a restraining order. That change will provide
27 due process, which none of us have gotten, for the
28 administrators to Community Care Licensing.

1 There must be a nonbiased mediation board. No one
2 talked to me except one person. No one sat down with me and
3 said, "We have a problem." Not one person.

4 SENATOR PETRIS: You didn't even get a phone call?

5 MS. DOBSON: I placed a phone call, and I got an
6 answer a month later. My clients was moved two months later
7 after the incident.

8 And I am this abusive person, when people had been
9 in the home over seven years, moved with me from Santa Clara
10 County, which Phyllis Eversole tried to stop at that time in
11 1976 -- in 1987, when my facility caught fire in Los Gatos,
12 California. By the time Phyllis Eversole got through with me
13 and I got to Sacramento at 6:00 o'clock, my clients and I
14 walked into Galt, someone from Sacramento Licensing was on the
15 telephone advising Mr. Brown that I was a very bad person and
16 don't hire me in the facility.

17 He said, "You have had eleven years to take her
18 license. Is she a criminal?"

19 "Oh, no, no, nothing like that."

20 SENATOR PETRIS: Who's Ms. Eversole?

21 MS. DOBSON: Phyllis Eversole has been the -- a
22 person in Licensing from Santa Clara County who has now moved
23 to Sacramento with the same type of discrimination,
24 harassment, and intimidation tactics that she used in San Jose.

25 SENATOR PETRIS: And who's Mr. Brown?

26 MS. DOBSON: Mr. Brown was the administrator and
27 owner of the care home that opened his doors for me and my
28

1 clients when our facility caught on fire in Los Gatos.

2 SENATOR PETRIS: After that incident, did you try
3 to get ahold of Mr. Gould to bring the complaints before him?
4

5 MS. DOBSON: We didn't get that far.

6 I was so traumatized and devastated, I finally took
7 myself to the doctor because I didn't have sense enough to know
8 that I was just walking in circles. I was dysfunctional.

9 SENATOR PETRIS: That's a pretty traumatic
10 experience. I think everybody will agree to that.

11 Are there questions from any of the Members of this
12 witness?

13 Okay, thank you.

14 MS. DOBSON: You're welcome.

15 MR. DOBSON: Thank you.

16 SENATOR PETRIS: Are there any other persons here
17 to oppose the nomination? We'll get support afterward.

18 There's one support witness who hasn't testified.
19 Is Mr. Hausey here?

20 MR. STEVENS: Good afternoon, Senators.

21 My name is Sam Stevens. I'm a business -- small
22 business owner in San Diego, California.

23 As a member of the Downtown San Diego Host Lion's
24 Club, I became involved with a facility called Boys and Girls
25 Mental Health Centers in El Cajon. The Lion's Club was a
26 fairly significant contributor to that facility, and as a large
27 contributor, held a majority position on the Board of
28 Directors, and that's my involvement.

1 My involvement with them came about a little over
2 three years ago. And I was a Board member for three months --
3 or six months, I guess, and then was elected as President of
4 the Board of Directors and held that position until November of
5 this year. During that period, there had been a number of
6 changes in the mental health care field, and essentially what
7 I'm going to testify about is our situation, or my experience
8 with Community Care Licensing in that endeavor.

9 Because of some changes in the health care field,
10 it was necessary for us to change or population from third
11 party clients, or third party referred clients, to all county-
12 funded clients specifically from San Diego County, Department
13 of Social Services, San Diego County Probation Department, and
14 the San Diego County Mental Health.

15 We have a 52-bed facility with another two group
16 homes. The agency has been operating since 1903. In our
17 current facility of 27 and a half acres, 52 beds in El Cajon,
18 for the last 27 and a half years.

19 We have an exemplary record of serving the
20 community of San Diego. And during this change, the down-
21 sizing, we went through three down-sizings of employees from a
22 high staff of about 145 people down to 63 people, necessitated
23 by cuts in available funding, but cuts in the amount of clients
24 that we were able to serve, and so that necessitated the change
25 to county-funded kids.

26 We were serving that community, and all of a
27 sudden, our staff was beat up. The clients we're serving are
28

1 much more significantly disturbed. And so, we ended up in July
2 of last year with some significant problems because of the
3 situation. And Community Care Licensing became involved
4 through an anonymous complaint and came out.

5 Our crisis, really, was during the July 4th
6 weekend. Community Care Licensing came out a couple of weeks
7 later, did an investigation, and issued a complaint, which we
8 responded to. Started taking corrective action.

9 Thirty days later, Community Care Licensing sent
10 back their recommendation on the changes that were needed. And
11 part of their recommendation was that they were not going to
12 renew our license, and so we filed an appeal.

13 Shortly after we filed that appeal, a Temporary
14 Suspension Order was cut. At that point, we were not given an
15 opportunity to appeal.

16 What had happened --

17 SENATOR PETRIS: Who issued that order?

18 MR. STEVENS: Fred Miller.

19 SENATOR PETRIS: You talked to him about it after?

20 MR. STEVENS: Afterward?

21 SENATOR PETRIS: Yes.

22 MR. STEVENS: No, at that point, no.

23 What transpired was that the Executive Director,
24 who had been hired in May, and who, after this crisis in July
25 had taken steps to correct the problems, we had been operating
26 with Community Care Licensing making repeated checks with no
27 deficiencies.
28

1 And on, I believe, October 3rd, we were -- the
2 Executive Director and I were asked to come in to Community
3 Care Licensing's office in San Diego, and we were served this
4 Temporary Suspension Order. We were told to fire the Executive
5 Director, and there were four other items on that particular
6 complaint. And that -- we were told that there was a Temporary
7 Suspension Order. We were told to fire the Executive Director
8 and to take the four steps of corrective action, which we had
9 already taken.

10 I was asked -- the only question that I was asked
11 in that conference was how do I feel about that. And my
12 response was that I was shocked and angry. And that was all
13 that I was able to give as an appeal.

14 I was given ten days to fire the Executive Director
15 and to implement these four changes.

16 I didn't have the authority to terminate the
17 Executive Director. We called an emergency Board meeting the
18 following week. I explained the situation to the Board of
19 Directors. I showed them the hand-written citation from
20 Community Care Licensing. The Board, in what I consider their
21 wisdom, decided that there was no wrong doing by the Executive
22 Director. And I know this personally, because I spent my own
23 time there. And as a matter of fact, in the last two years,
24 I've got to say that I probably spent 25 percent of my working
25 hours devoted to Boys and Girls Mental Health Center for no
26 pay, as a volunteer.

27 The Board supported not terminating her, and
28

1 shortly, two days after that emergency Board meeting, I called
2 Community Care Licensing and said, you know, "We have decided
3 we are not going to terminate the Executive Director. We
4 cannot determine any wrong doing. We would like to have the
5 opportunity to discuss what our views of the situation are."
6

7 I was told by one of the employees, because the
8 division leader at that point was out of the office, and he
9 assured me that we would be given an opportunity to express our
10 views on what happened.

11 The following day was the deadline, and at 10:45 in
12 the morning, the chief of that division called me at home and
13 asked if I had fired the Executive Director. I told her I had
14 not, that I had placed her on administrative leave pending the
15 agreement that I had the day before with the next in charge
16 that we would be given an opportunity to appeal.

17 And she said, "Well, that's not the case. And the
18 Temporary Suspension Order was served, and we are closing your
19 facility."

20 SENATOR PETRIS: Who was that?

21 MR. STEVENS: That was Mary Delmast.

22 SENATOR PETRIS: Out of Sacramento?

23 MR. STEVENS: No, she was -- she's the head of the
24 San Diego office.

25 We -- I pleaded with her to hold the -- serving the
26 order, if that was her determination to do that, that's fine,
27 but at least give us an opportunity to counsel the children,
28 counsel the staff. Some of those children had been in that

1 facility for over two years; that was their home.

2 These children that we serve come from the worst
3 possible deprivation that mankind can see. These are terribly
4 traumatized children.

5 That's not to say that they're really pleasant to
6 be around at all times. They are not. They are disturbed
7 children.

8 I pleaded with her with tears running down my face
9 to please to hold the order so at least we could counsel the
10 children, and she would not do that.

11 The order was served. She sent one of her people
12 out to the agency to sit and watch that the children would be
13 removed. Two hours later, the vans drove up and the children
14 were taken out.

15 There was -- it was -- to try to describe the scene
16 is one of the most sad things that I can tell you. The
17 children were terrified. There is a room in that agency that
18 sits there today with possessions that some of these children
19 had, and these are children that don't have traditional
20 families. They were taken out so soon that they could not take
21 with them some of their radios, some of their clothing.

22 There's one child that has written for his teddy bear that we
23 can't find. It's been misplaced during that raid.

24 It was -- it was a terribly traumatizing situation,
25 not only on the children, on the staff, and on the Board, and
26 all those people that were involved.

27 We were never given an opportunity, other than to
28

1 file an appeal on the not renewing our license. And at that
2 point, that's when we were threatened with the Temporary
3 Suspension Order.

4 Throughout this process, the media was brought in,
5 and I can only assume that it was brought it by Community Care
6 Licensing, that there was an awful lot of terribly unfavorable
7 publicity.

8 In an agency where there were some identifiable
9 problems, problems that were corrected, and then to have those
10 problems corrected for a month and a half, and then to come in
11 and serve a Temporary Suspension Order because we had the
12 audacity to file an appeal is just beyond me.

13 To ask that an Executive Director, who has done
14 nothing but change the agency for good, from a terribly
15 difficult situation, to ask her to be terminated, this woman is
16 now black-listed in the care-giving industry in our community.
17 She's been involved in this industry for the last 15 years,
18 done an exemplary job. Came recommended by an incredible
19 amount of very well-placed people within our community. This
20 woman is going to have a very difficult time getting a job.

21 The staff was coerced by the state's attorney. The
22 original came out -- complaint came out saying that staff stood
23 by while children cut on themselves, while children had sex
24 with each other, and while children drank alcohol and had drugs
25 in the facility, which has been completely unsubstantiated.

26 And it was obviously the great -- it was the -- the
27 press had a field day with that. You know, all you need to do
28

1 was have sex, drugs, and teenagers in the same sentence and it
2 is a field day.

3 SENATOR PETRIS: Was all this based on an anonymous
4 complaint?

5 MR. STEVENS: It was started on an anonymous
6 complaint and an anonymous letter that went to CCL.

7 At that point, when we -- when the Board of
8 Directors decided to defend ourselves on the TSO, the state
9 started building a case, and we started building a case. The
10 state's case was originally built on this anonymous letter, the
11 testimony of a child that was in the facility that had a
12 history of -- in the terms of one of the youth development
13 counselors -- whose practice was to gross out adults by these
14 gross misstatements.

15 This is the type of thing that the TSO was built
16 on.

17 We hired an investigator to go back and interview
18 staff, get signed statements from the staff refuting the vast
19 majority of the claims by the state. We have gone through
20 considerable expense in defending ourselves.

21 We got to a point where the Board tried incredibly
22 hard to reopen the agency, to continue to serve children. We
23 have an auxiliary of 260 members that works terribly hard to
24 contribute money toward this facility.

25 In the defense, it got to a point where we could
26 continue fighting, similar to an innuendo that, "Do you still
27 beat your wife?" It was not a position that could be defended.
28

1 I don't think that there's a residential treatment
2 center facility similar to ours that has not had some incidents
3 that you could put in the paper and create dramatic headlines.
4

5 I have talked to the county agencies that we
6 served, and because they also have to handle at various times
7 these same children, they have had the exact same problems that
8 we have. Our situation was not different. It was not out of
9 the ordinary.

10 It was not right, but it was not one that was
11 vastly different from any other.

12 I have no idea why we were singled out, or I felt
13 like we were singled out for this type of horrible action.

14 SENATOR CRAVEN: May I interrupt you for a moment
15 and ask the Senators if they have any other questions of this
16 witness? Senator Petris.

17 SENATOR PETRIS: I just have one or two more.

18 SENATOR CRAVEN: Fine. Well, I thought if we could
19 go, rather than just have him give us a recitation of this,
20 which is very interesting and certainly must be germane, but
21 I'd like to try to move it along a little bit.

22 SENATOR PETRIS: How would you correct this policy?

23 MR. STEVENS: By all means, by giving the providers
24 an opportunity to respond to any action.

25 I would think that the first thing that Community
26 Care Licensing should endeavor to do, particularly in almost
27 every situation, but this was a nonprofit agency made up of
28 volunteer directors, paid staff, but give them the opportunity

1 to negotiate in the correction process, to be able to at least
2 express their views prior to a Temporary Suspension Order.

3 I understand when there are life-threatening
4 situations, and I'm sensitive to that.

5 In this situation, we're talking about six weeks
6 after the last reported incident, they serve a Temporary
7 Suspension Order. We had 38 children in the facility at that
8 moment.

9 By all means, the attitude of that agency has to
10 change. It has to change from being an enforcer, and I mean
11 enforcer in the most punitive sense, to one of cooperation.
12 How can we better keep a facility like this open?

13 We have a tremendous -- we have between 8 and 10
14 million dollars' worth of assets that we're trying to
15 contribute to the community that we are not going to be able to
16 do now. We feel so prejudiced by this agency, Community Care
17 Licensing Division, that we will never, ever open another
18 facility like this.

19 The Board is beat up. The Executive Director is
20 trashed. There is a Residential Director that can no longer
21 work in this state.

22 It has to -- the attitude has to change, and it has
23 to come from the top.

24 SENATOR PETRIS: That's why you're here.

25 MR. STEVENS: Yes, sir.

26 SENATOR PETRIS: Thank you.

27 SENATOR MELLO: Mr. Chairman.
28

1 SENATOR CRAVEN: Senator Mello.

2 SENATOR MELLO: I'm really surprised by what I'm
3 hearing here today, because I know Fred Miller and worked with
4 him a lot on legislation. Senator Petris and I probably
5 carried most of the legislation relating to licensing and
6 penalties.

7 There were a lot of problems in the whole area of
8 residential care, clear on up to skilled nursing facilities.

9 What I'd like to ask Mr. Gould to do, if he could
10 have Mr. Miller or your Department send just a brief summary of
11 these two cases, the Dobson cases and this one here, and
12 perhaps Senator Petris would like a copy as well.

13 I just want to review them, because I'm interested
14 in if there's legislation needed, we also have this report, I
15 guess, that came out from your Department on the training
16 program regarding to some of the problems in the Community Care
17 Division.

18 I would like to take a look at this whole due
19 process. I don't think it was ever my intent that a Temporary
20 Suspension Order would close you down automatically, because I
21 think the word "temporary" means it goes through the process,
22 and you get a response, and then whether or not the Temporary
23 is made Permanent or not, that usually has a time lag.

24 I don't know who carried the legislation that you
25 have operated under, but I will certainly take a look at it
26 through my Subcommittee on Aging, and try to see whether or not
27 there's need for review and helping to improve the due process
28

1 so that people are just not shut down and the clients moved out
2 with no such notice, which is even more disruptive.

3 But I'm still committed, as I know Senator Petris
4 is and others, to really enforce the Class A and AA violations
5 that cause harm to the patients, have caused death, and many of
6 the unsanitary conditions, and the real lacking of proper care
7 amongst the whole institutional care.

8 Bearing in mind that I think we in government are
9 partly to blame. We just have not provided the funding to
10 provide the quality of care that we're all asking for,
11 especially in the Community Care Division. It's been marginal
12 at best.

13 So, Mr. Gould, if we could get those, just a brief
14 summary, to see just where we might be of some assistance.

15 MR. GOULD: We'd be glad to look at these cases
16 that have been described here today.

17 And as you mentioned, there are a whole series of
18 changes that we are making to the program as a result of doing
19 round table meetings throughout the state. And Senator Watson
20 and Assemblyman Bates were instrumental in really setting a
21 focus for that so we could get input from providers and
22 understand where problems were.

23 We understand the changes have to be made in the
24 program. We're pursuing that and have taken steps to implement
25 it already.

26 So, we believe we're on the right track. We'll be
27 glad to look into these, and if additional legislation is
28

1 necessary, we can certainly work with you on it.

2 SENATOR MELLO: Thank you.

3 SENATOR CRAVEN: May I ask you a question,
4 Mr. Gould.

5 These changes that you are contemplating, do some
6 of them touch upon those situations as described by the
7 witness?

8 MR. GOULD: Yes, Senator, they do. When we look at
9 Temporary Suspension Orders -- and they do happen infrequently.
10 We're talking about three-tenths of one percent of the
11 facilities, and we have nearly 90 facilities -- 90,000
12 facilities throughout the state. So, it's a very small number
13 where that Temporary Suspension Order is required.

14 Where we have changes in terms of notifying the
15 provider about any issues regarding -- that are under
16 consideration or investigation, trying to work more closely
17 with them so they understand the issues involved.

18 Our intent is to try to assure that we have a
19 quality home for the residents. And I think our obligation is
20 to work with the providers to make sure that we have that
21 mutual --

22 SENATOR CRAVEN: Well, I think what we must do is
23 to be ever cognizant of the fact that despite the miniscule
24 percentage of the whole, it is a maximum thing to the person
25 who has to live under it. And therefore, it deserves full and
26 total clean-up. It would appear that way to me.

27 I heard some of your testimony on the television
28

1 upstairs, and I think that the situation deserves a great deal
2 of looking into, and I'm sure you would agree.

3 I think it's certainly to your credit and the
4 Department that you have, or the Agency that you have, that
5 you've already taken steps.

6 How long do you think it'll be before you can
7 implement those items?

8 MR. GOULD: We have nine specific changes that we
9 will be implementing. A number of them go into effect March
10 1st, so we're really talking about just a few days for what
11 looks to be half of them. And others will be going into
12 effect, all of them, by July 1. So, we have nine different
13 changes.

14 SENATOR CRAVEN: Do you contemplate more beyond
15 that?

16 MR. GOULD: If necessary, sir. We -- one of the
17 issues is, a number of people have raised the concept of an
18 ombudsman relationship, to try to have a mechanism to work with
19 providers, to try to resolve complaints.

20 We do have in mind something, we're calling it a
21 Technical Support Unit, which would go out to facilities that
22 are having problems to work with them to resolve problems as
23 opposed to looking at an enforcement action.

24 So, we're open to looking at that process. Whether
25 an ombudsman-style structure, or this Technical Support is the
26 right answer, we do think we need some kind of way to work with
27 providers to solve problems as opposed to looking at the
28

1 enforcement side.

2 SENATOR CRAVEN: Would that ombudsman that you
3 envision be with the Department or with the Agency?
4

5 MR. GOULD: Well, right now, what we've looked at
6 is within the Department.

7 SENATOR CRAVEN: So, in other words, the people
8 closest to it would be involved.

9 MR. GOULD: That is correct.

10 SENATOR CRAVEN: Would they be in touch with your
11 office at the same time?

12 MR. GOULD: I certainly believe they could be. You
13 know, what we're trying to do is to open up the process to
14 resolve problems. And if they need to come to the Agency to
15 get either further direction or to change the approach, we're
16 open to do that.

17 SENATOR CRAVEN: It appears that there seems to be
18 a lack of chronology in handling this, that things don't fall
19 into place as they should, and the people are left high and
20 dry. They have no way no recourse, no redress, nowhere to
21 turn, and they're just beside themselves, and it's very, very
22 understandable. It certainly is a traumatic situation which
23 they must face.

24 I did want to get that on the record.

25 Do you want to sum up your comments, sir, please?

26 MR. STEVENS: I don't know if I can really address
27 many other issues, other than just again to really urge that
28 there are some changes that absolutely have to be made.

1 SENATOR CRAVEN: I think we all recognize that.

2 MR. STEVENS: We -- we just -- we feel as totally
3 distressed as you've expressed.

4 SENATOR CRAVEN: Well, your being distraught is
5 certainly very reasonable, to say the least. I think you've
6 handled yourself admirably well in expressing those things that
7 have happened to you, and you've made a very good presentation
8 in my judgment.

9 MR. STEVENS: Thank you, Senator.

10 SENATOR CRAVEN: Thank you very much.

11 Now, these are persons who spoke in objection, is
12 that correct?

13 There are others who wish to speak in opposition?
14 Yes, there are.

15 Dear, would you come up, please. State your name
16 and address.

17 MS. DOYLE: My name is Ruth Doyle.

18 Excuse the way I'm dressed. My father's in ICU
19 having brain surgery tomorrow morning. But I came because it's
20 really important to me to be here today.

21 I'm one of the few people that have spoken today
22 that have actually met with Mr. Gould. That's why I wanted to
23 talk.

24 And it seems like there could be an opinion that
25 maybe a lot of the things that are going on, he's not aware of,
26 or that they're happening on a lower level, so therefore, the
27 responsibility has not reached the top.

1 My father had raised us to think that, you know,
2 there is due process. There's places that you start, and you
3 move up, and eventually you'll get to a level that somebody
4 will be able to help you.

5 When several of the providers that I'm familiar
6 with, when we've had problems, we started at the local level
7 when you deal with your evaluators, and that's not successful,
8 then you go to the next step up, which is their supervisor.
9 And that wasn't successful, and then we went to the district
10 manager, and that was not successful.

11 And at that time, feeling very frustrated, several
12 of the providers -- I'm real nervous here -- but several
13 providers had been closed down. You know, it's devastating
14 when you lose your livelihood all in one day.

15 And we're -- you know, we have -- these children
16 that we're dealing with are severely emotionally disturbed
17 children. The complaints that Mr. Gould's office will receive
18 are all from either a disgruntled employee, or from a severely
19 emotionally disturbed child.

20 Our employees, when they're upset with us, they
21 don't go to the Labor Board or to Fair Employment. They go to
22 Licensing, because they have a captive audience. And they can
23 say whatever they want, and it is taken to be gospel.

24 When a Temporary -- I mean a Request for Revocation
25 was made against our agency, there were approximately 36
26 allegations that were brought against us. However, when we got
27 to the settlement conference, all of the other 33 had been
28

1 dropped and there were only three at that particular time. So,
2 that is the process -- I mean, that is something in the process
3 that needs to change, in that people can bring allegations
4 against you. The Department can use those allegations to close
5 you down, and then later on say, "Oh, I'm sorry. Those weren't
6 really true. We have a few others." And that's just not fair.

7
8 The process is also so that if you do not have
9 money, you cannot continue to compete, because many of the
10 agencies that are here today have spent \$10,000 and \$12,000 in
11 legal fees and have still been closed down.

12 And despite public opinion, everybody, you know,
13 we're making all this grand theft money. We don't have the
14 money to be able to fight this Department.

15 We went to Mr. Miller and talked with Fred Miller
16 and literally begged him, "Please look at this situation.
17 There's some problems." Maybe it's not you. Maybe it's those
18 that are under you. We were not successful.

19 At that time, after we went to the Senator's
20 committee, and they arranged for a meeting with us, with
21 Mr. Gould personally, at that time we brought to his attention
22 my case and several others. And, you know, let him know at
23 that time that we felt that Fred Miller was God; that he stood
24 between us and our salvation because everything that he said
25 was done. He could sign an order, and we could live; he could
26 sign an order, and we could die. And that was so scary.

27 And we came to your Department. We sat at a table,
28 three providers and several other attorneys, and we begged you

1 at that time, "Please do something. We need your help." We
2 didn't know what else to do.

3 We received response from your Department, I guess,
4 within maybe it took you about a month or so, because we were
5 waiting and just knew that we've reached the top here. We're
6 going to get some help.

7 We received a letter from your Department saying
8 that you had looked into it, and that you felt that the actions
9 that Fred Miller had taken were substantiated, and that
10 concerns me. Because, people can come, and they can say
11 whatever they please about us, and we have no recourse.

12 The only recourse we have is to spend money, which,
13 if you close us down, we don't have the money. You don't have
14 to even prove whether I molested a child or not, because I have
15 no money to fight you. And that is scary.

16 So, that's why I'm here today. If Mr. Gould
17 receives his -- I guess this is the confirmation hearing, or
18 whomever, there has got to be some changes, because the
19 children that we are dealing with, nobody else wants. You
20 don't want them in your home. We're willing to take them into
21 hours. They're severely emotionally disturbed children. They
22 come from every background, and they are going to lie. And
23 they're going to say whatever. And we have no recourse.

24 And so, that's why I came to testify.

25 SENATOR CRAVEN: We thank you very much for your
26 testimony which was excellent.

27 Senator Petris.
28

1 SENATOR PETRIS: I notice in one of the proposed
2 actions that you're going to be taking, there's a statement
3 that effective March 31, all TSO actions under consideration
4 that have received concurrence from the Attorney General will
5 then be reviewed by a Deputy Director. You've got some new
6 procedures in place.

7 My question is, under the current process, does the
8 Attorney General do any independent investigation at all? Does
9 the Attorney General send any staff into a facility to talk to
10 the owner, operator, or staff, or patients before putting the
11 stamp of approval on a TSO, or is that just kind of
12 perfunctory?

13 MR. GOULD: I think they review the case file,
14 Senator, but I don't believe that there is a complete starting
15 over of the investigation.

16 I think what typically happens is that the
17 investigation, initial investigation, happens at the licensing
18 area within the field. At that point it goes to the community
19 -- to the Legal Division within the Department of Social
20 Services, and they do an independent investigation. And then
21 from there, they make determination if they believe it's
22 appropriate to pursue a Temporary Suspension Order over to the
23 Attorney General for their review of the case and the merits of
24 it. And then at that point it would go to the Community Care
25 Licensing Division.

26 Two changes we think are important is, number one,
27 to get more input from other people who may be involved with
28

1 that home, whether it's the schools, whether it's Mental
2 Health, providers in the area, so we have a broader perspective
3 about what's happening within that home and the overall
4 environment of that home.

5 SENATOR PETRIS: Yes, that sounds like a good step
6 to me.

7 It seems that in the cases we've heard about, there
8 was no communication from anybody, whether it was CCL, or AG,
9 or anybody in between, or county. Where an official
10 representative of the State Agency would come in and say,
11 "Hey, we've been told this, and this, and that. What's going
12 on in here anyway? Let's find out."

13 Apparently, that hasn't been done. And what you're
14 suggesting will see to it that that is done, I gather.

15 MR. GOULD: Absolutely. We believe that more
16 communication is appropriate. We believe that there ought to
17 be information provided in writing to the providers. They
18 understand about any complaints.

19 I think only in circumstances where we might feel
20 that the children or the clients are in such jeopardy if we
21 would provide notice there might be --

22 SENATOR PETRIS: Some emergency.

23 MR. GOULD: Right. But we want to change the
24 method in which we provide input to the provider about any
25 charges that are being made, and that would be in writing
26 within ten days.

27 MS. DOYLE: Can I say that the provisions that we
28

1 have, the regulations that are currently on the books, provide
2 protection for us.

3 The only problem is enforcement. As he read the
4 TSO, that's not at all the way in which it is actually imposed
5 upon us. It is not as if -- the only person in all -- you said
6 the AG's office and all this -- the only person that we've ever
7 seen would be an evaluator. The evaluator comes out, and they
8 say that the abuse occurred. And it goes to the Legal
9 Department. The Legal Department never comes and actually sees
10 what's going on. They talk to maybe an employee that I fired,
11 or to whomever they want. I am never, ever hardly consulted in
12 this matter.

13 And there books on -- there are laws that protect
14 us. The only problem is, we have no way to enforce those laws.

15 If Fred Miller decides to sign an order that is not
16 substantiated, what can I do to him? Nothing. I could go to
17 him, but when I did, again, what can I do if he doesn't
18 respond? I can do nothing.

19 So there needs to be some type of safeguard built
20 into it that these -- that they are not God. That if they do
21 not respond, and they do not do what the regulation says, that
22 I can do something to them. Because right now, you know, they
23 can do whatever they want.

24 They can come today, and even coming here is scary.
25 I said this to him before. When I came before and I testified
26 to him about my -- the problems I was having, the fear or
27 retaliation against -- from the Department.
28

1 Immediately I went home, and within two days, they
2 were on my doorstep again and have continued to be so. And I
3 would imagine probably by tomorrow they will be there. And I
4 believe that, because it has continued to happen.

5 There have been TSOs that have been issued because
6 of non-adequate food. And when we get to the process, there
7 was only five apples, and they were too small in your home.

8 SENATOR PETRIS: If they come back in the next few
9 days as a result of this hearing, would you let us know?

10 MS. DOYLE: Yes.

11 SENATOR PETRIS: I'd like to get a direct report
12 from you --

13 MS. DOYLE: My employee just said they'll be there.

14 SENATOR PETRIS: -- as to who it is and the nature
15 of the questioning, and so forth.

16 MS. DOYLE: Uh-huh, yes.

17 SENATOR CRAVEN: They may be there in a productive
18 sense, too.

19 MS. DOYLE: With what?

20 SENATOR CRAVEN: Productive sense. In other
21 words, they may be helpful.

22 MS. DOYLE: Yes, there is a first. That would be a
23 first.

24 [Laughter.]

25 MS. DOYLE: And that's what we're praying for. I'm
26 serious. We're in this -- my husband pastors a church in this
27 city, and this is also a ministry for us. And we are striving
28

1 to make some changes, but it's too stressful.

2 Like I said, my father's in ICU. And in fact, last
3 week when my father was taken to ICU, I was in my car, flying
4 down Stockton Boulevard when my pager went off. And I pulled
5 over to the side, ran into Trucadero and called. And my
6 employee is saying, "Licensing is here."

7 There should not be that much stress in addition to
8 trying to deal with the stress of dealing with severely
9 emotionally disturbed children, dealing with people at CCL that
10 at times seem to be SED. It's just not fair.

11 SENATOR CRAVEN: Well, we all agree with you that
12 it could be improved upon.

13 MS. DOYLE: Okay.

14 SENATOR CRAVEN: Thank you very much.

15 Senators Beverly and Mello, do you have any
16 questions? Nothing further.

17 Does anyone else wish to speak in opposition? Yes,
18 sir, come forward, please. State your name and address.

19 MR. WILSON: Gary Wilson from Sacramento.

20 In regards to one thing that Ms. Doyle said in a
21 meeting that we had with Mr. Gould, we were told at that time
22 -- I was involved with one of the facilities that was -- had
23 gone to Mr. Gould's office. A total of three of us had gone to
24 speak to him regards to some of the problems that we were
25 having.

26 We were told, quote-unquote, "We can't talk to you
27 right now because you're in litigation."
28

1 The response to that would have been, "You put us
2 in litigation; you could take us out."

3 A lot of the problems that we've got is that
4 there's rules and regulations that are both in the Health and
5 Safety Code, the Government Code, Welfare and Institutions
6 Codes that already exist, yet the Department doesn't adhere to
7 them. The law states, including even on one of their own
8 pieces of paperwork, the law states that any deficiency that a
9 facility has, they have to be notified in writing.

10 Excuse me for being nervous.

11 SENATOR CRAVEN: That's all right. Take your time.

12 MR. WILSON: Has to be notified in writing of being
13 in noncompliance and given time to adhere to compliancy.

14 Yet the Department doesn't adhere to that, and
15 there is no department that you can go to if CCL or DSS is not
16 adhering to the rules and regulations.

17 When we went to Mr. Gould, he turned around and
18 said, "Well, we'll look into it." He gave it to his staff
19 attorneys, of which I think there's 38, something like that.
20 There's a great expenditure of money having 38 attorneys.

21 SENATOR CRAVEN: With the problems that we've
22 recounted here today, you can understand why you have 38, don't
23 you? He's got in for 48 now.

24 [Laughter.]

25 MR. WILSON: It would be okay if they even adhered
26 to the regulations, but there's one attorney on Mr. Gould's
27 staff that even went out and did an illegal deposition out of
28

1 the State of California. Government Code states that in order
2 to do an out of state deposition, that you have to go to
3 Superior Court in order to do it. This was not done.
4

5 They took a disgruntled employee of ours that we
6 had terminated. Our rates were cut back, and we had terminated
7 him on -- partially on that basis. They found him in the State
8 of Nevada. Went and did an out of state deposition, which was
9 done illegally according to the Government Code. And he
10 admitted on a video tape that he had choked one of our
11 residents, yet CCL's never turned around and done anything to
12 prosecute that individual. They came after our company, but
13 they didn't prosecute the person that stated that they had
14 choked and hit a resident.

15 SENATOR CRAVEN: Let's interrupt just a moment.

16 May I ask Senator Petris, who's an attorney, do you
17 have any thought about what Mr. Wilson's just recounted?

18 SENATOR PETRIS: Yes, I think that's very serious.
19 It should be looked into.

20 MR. WILSON: Yes, I've got a --

21 SENATOR PETRIS: I'm not familiar with those
22 particular codes --

23 MR. WILSON: Government Code 11511 states:

24 "Where the witness resides outside
25 the State and were the agency has
26 ordered the taking of his testimony
27 by deposition, the agency shall
28 obtain an order of court to that

1 effect by filing a petition therefor
2 in the superior court in Sacramento
3 County. The proceedings thereon
4 shall be in accordance with the
5 provisions of Section 1189 of the
6 Government Code."

7 The order was signed by Lonnie Carlson by somebody
8 else within the Department.

9 SENATOR PETRIS: That person's not a superior court
10 judge, I gather?

11 MR. WILSON: No, sir. He was a member of CCL.

12 SENATOR CRAVEN: Well, of course, you wouldn't
13 necessarily appear before a judge or in a court if you're
14 giving a deposition.

15 MR. WILSON: No, sir, but according to this, in
16 order to do one out of state, it's required that you go to
17 superior court.

18 SENATOR CRAVEN: Yes, I understand what you're
19 saying.

20 MR. WILSON: Again, going back to the area of
21 deficiencies, where someone is TSO'd, Senator Petris, if you
22 picked up the phone right now, you could call Community Care
23 Licensing and say you saw Joe Provider out at Montgomery Ward's
24 parking lot beating a resident with a baseball bat, but I want
25 to keep it as anonymous.

26 We got together through a few different offices for
27 Community Care Licensing. We went through and we accumulated a
28

1 book that they referred to as the Green Book at the Department.
2 And what this was was a bunch of providers where we had
3 everything from oral copulation among staff members in front of
4 residents, to finding flies and maggots in food, all of this
5 substantiated. The book is approximately this thick.

6 There's two Senators here in the Capitol that have
7 a copy of this, and if you need a copy, they'll be glad to
8 provide it for you.

9 All those facilities are still open, yet there's a
10 lot of providers that are out there right now with a lot less
11 --

12 SENATOR CRAVEN: Deficiencies?

13 MR. WILSON: Deficiencies, thank you, that have
14 been shut down. It seems like that a lot of facilities end up
15 getting targeted, and once somebody gets targeted, that's the
16 end of the story.

17 They've used the media to close places down. One
18 particular case, I don't have the code in front of me, but the
19 codes require that if someone is going to get TSO'd, the
20 placement agencies need to be notified.

21 Well, Mr. Miller -- who, by the way, has no degree
22 in anything other than an art degree, which I find being kind
23 of obscure for somebody that's the head of Community Care
24 Licensing working with adults, and Social Services, and all
25 he has is an art degree. So, unless they stole a painting, I
26 don't know what bearing he could have on a lot of things.

27 But there's a lot of different areas that Community
28

1 Care Licensing basically is just not taking care of. They used
2 the media in this particular case, like I said, and I don't
3 have the code, but all they did was, they called five sheriff's
4 cars out to this provider's residence and used it on the media.
5 The flashed the gentleman's telephone -- or, they flashed his
6 car by orders of Fred Miller, "Go out to this man's hearing."
7 They flashed his automobile on the television saying, "This is
8 where he's using the money."

9
10 Everytime we have brought issues to Community Care
11 Licensing, it's been, "We will check into it," and then they
12 never get back to you. And if you gentlemen know a government
13 agency that we can look at or call when there is a problem,
14 other than Social Services or Community Care Licensing, the
15 providers are out there by themselves. If they do something
16 wrong, they've got all the money; they've got all the time;
17 they've got all the attorneys to be able to fight.

18 The providers have no way to fight once they've
19 been shut down. The law states that if you're shut down on a
20 TSO, you have 15 days to file a motion for appeal. Then the
21 hearing has to start within 30 days of that.

22 I can give you at least a dozen cases, Senators,
23 where once the hearing is started on the 30th day, they
24 postpone it for 30 days, and they can drag it out for six,
25 seven months before they're finally concluded.

26 Now, I don't know what your budgets are like, or --
27 well, you were an attorney, sir. You know what you guys
28 charge.

1 SENATOR CRAVEN: He still is an attorney, and so is
2 Senator Beverly.

3 MR. WILSON: Even if you're right, you can't fight.
4 And that's not the way the system is supposed to be set up.

5 So many people that want to be able to fight, the
6 Department has taken away their ability to even do so. And the
7 only ones that are suffering are the kids and the mentally
8 disabled people and the elderly that are out there.

9 SENATOR CRAVEN: Mr. Wilson, do you live in
10 Sacramento?

11 MR. WILSON: Yes, sir. I'm a former Los Angeles
12 police officer.

13 SENATOR CRAVEN: Congratulations.

14 The gentleman who represents you would be Senator
15 Leroy Greene?

16 MR. WILSON: Yes, sir.

17 SENATOR CRAVEN: Have you ever brought this to
18 Senator Greene's attention?

19 MR. WILSON: Yes, sir. They've been working --
20 they've been attempting to work with Mr. Gould for about the
21 last five or six months on this issue.

22 SENATOR CRAVEN: Are you familiar with that,
23 Mr. Gould?

24 MR. GOULD: I'm familiar with the Green Book. That
25 is --

26 MR. WILSON: LKM Group Homes?

27 MR. GOULD: I didn't know which homes you were
28

1 with.

2 We did an extensive review of that. There was a
3 book that was produced that is quite thick -- I think that was
4 an accurate description -- and in that, there were some homes
5 in which the question was whether the homes were being treated
6 appropriately and consistently in terms of their review.

7 I established an independent task force to take a
8 look at that. I brought in staff members from the Agency as
9 well as an attorney who's well respected in the community that
10 works in Community Care Licensing and knew those law, as well
11 as John Healey, who is the interim Director of the Department
12 of Social Services, to take an independent look at these and to
13 see if they felt there were problems in terms of how actions
14 were taken, whether there was consistency.

15 And upon that review, they reported back to me and
16 shared that they found that there was appropriate actions
17 taken, and they verified it.

18 To clarify, a number of those other homes, it was
19 stated that they were not shut down. A number of the other
20 homes were also closed where they revoked their license, or
21 they basically declined to keep operating because there were
22 serious problems in those facilities.

23 I think -- we also took the opportunity then to sit
24 down with the Senators who were most interested, who had
25 expressed an interest in this issue, to share with them the
26 findings, and we offered to meet with all of the providers who
27 had raised a concern regarding these issues, to share the
28

1 findings so that we could explain it to them. That offer was
2 not accepted.

3 So, we have taken this very seriously, and that's
4 been our approach.

5 SENATOR CRAVEN: Well, I get the impression from
6 what you say that you feel that there was a lot of correctness
7 to what Mr. Wilson has said, and you have set about to try to
8 get some complete and total understanding in an unbiased
9 manner.

10 Would I be correct in assuming that there's still
11 work that may be done to assuage the problem which he has
12 recounted?

13 MR. GOULD: Yes, sir.

14 I think when we talk about the nine changes we're
15 making, I think those go a long ways towards remedying some of
16 the concerns that have been expressed. And we're on the path
17 to implement a number of those. As I mentioned, a number of
18 those will be implemented March 1st.

19 SENATOR CRAVEN: Very good, thank you, sir.

20 MR. WILSON: How does that affect the homes that
21 have already been shut down because all at once your Department
22 sees that the regulations needed to be updated? What does that
23 do to the homes that have already been shut down? Is there
24 going to be a reconsideration for those homes?

25 SENATOR CRAVEN: Yes, if you would respond, please.

26 MR. GOULD: Sure.

27 I think in those situations, you mentioned LKM in
28

1 particular, I think that there were full hearings before an
2 administrative law judge where they did a review and, I
3 believe, the hearings went for 13 days, where there was full
4 opportunity for everyone to present an independent body what
5 their perception of the situation was, to get a fair hearing.
6

7 And in that situation, the administrative law judge
8 sided with the Department of Social Services and basically said
9 that the action taken by the Department was appropriate.

10 So, I wouldn't see going back and trying to reverse
11 an action in which an administrative law judge has made that
12 determination.

13 MR. WILSON: Even though the administrative law
14 judge is contracted through your Department?

15 SENATOR CRAVEN: Well, the administrative law judge
16 is in a position where, really, he can do -- he makes the
17 decision as to what he thinks is appropriate. The Legislature
18 really has no rebuttal to the administrative law judge.

19 MR. WILSON: Okay.

20 SENATOR PETRIS: Mr. Chairman.

21 SENATOR CRAVEN: Yes, sir.

22 SENATOR PETRIS: Unfortunately, I'm going to have
23 to run.

24 I wondered if -- there are other questions I want
25 to go into on the nuclear waste problems.

26 SENATOR CRAVEN: Yes, sir.

27 SENATOR PETRIS: And I'd like to shorten it by
28 submitting some questions in writing and asking Mr. Gould to

1 answer them, and have this put over to a week or two, maybe a
2 couple weeks.

3 SENATOR CRAVEN: Very well. Would it --

4 SENATOR PETRIS: There's also interaction between
5 his shop and the Health Department.

6 Now, you might be getting bashed here for things
7 that the Health Department should have done in radioactive.
8 So, there's similar questions I'd like to put to the nominee,
9 Dr. Coye, so there's overlapping things there. I think it'll
10 help us make some kind of recommendations for resolving the
11 nuclear waste things.

12 SENATOR CRAVEN: Very good.

13 Let's make a determination right now that we'll put
14 the matter over for a period of two weeks.

15 MS. MICHEL: I was wondering, Senator Petris, maybe
16 we should do it at the same time we do Dr. Coye. That's in
17 three weeks.

18 SENATOR PETRIS: Yes. Does that put him in
19 jeopardy on the time? He started in April, I understand.

20 When did you start?

21 MR. GOULD: I believe it was April 16th.

22 MS. MICHEL: That's a month in advance.

23 SENATOR CRAVEN: That's enough time.

24 SENATOR PETRIS: I don't want to push you right up
25 against a deadline.

26 SENATOR CRAVEN: No.

27 SENATOR PETRIS: Thank you very much, Mr.
28

1 Chairman.

2 SENATOR CRAVEN: You're entirely welcome.

3 Have we now heard from all of those people in
4 objection?

5 MS. MICHEL: No, you have other people here.

6 SENATOR CRAVEN: We have others?

7 MS. MICHEL: There may be one or two more.

8 SENATOR CRAVEN: I don't like to have you appear
9 before a short committee, which we are now, Senator Beverly and
10 myself.

11 What do you feel, Bob?

12 SENATOR BEVERLY: Let's inquire how many there are.
13 I didn't see that many hands go up.

14 SENATOR CRAVEN: We're back to normal now; we've
15 got three.

16 There's this gentleman in the front row, and there
17 appears to be just one that we have seen. There's another one;
18 there are tow.

19 Why don't we proceed with those people. Senator
20 Mello, these are still people in objection. There appears to
21 be two more left.

22 What we have done is set the matter over for a
23 period of three weeks, and we can just proceed, if it's
24 agreeable with you.

25 SENATOR MELLO: I think we ought to hear everybody
26 that's here today so we can just put it over.

27 SENATOR CRAVEN: Absolutely. I agree with you.
28

1 You two are going to have to fight it out. I don't
2 know which of you was here first. He's bigger.

3 MR. HAUSEY: I'm Willie Hausey.

4 I'm here in support not as an opposition.

5 Let me say here that I think a lot of work has to
6 be done in this area. And one of the things providers don't
7 have is rights. Doctors have rights; lawyers have rights.
8 Providers don't have rights.

9 One of the things we need to work on is a system
10 that gives providers a right to operate a facility, just like a
11 doctor operates his office. If he makes a mistake, malpractice
12 is filed against him. He still goes on with his business.

13 Somehow, we have to take a closer look at
14 providers, as now they are up in a professional level, as we
15 used to look at them as care providers. They are now
16 residential care providers. They are professional people, but
17 the regulations haven't moved along with the professionalism
18 that these providers are doing now.

19 I have worked closely with this man here, Mr.
20 Gould. I have worked closely with the Department. And I have
21 a good rapport; the organizations I represent have a good
22 rapport.

23 We need to, as associations, get together, put in
24 some legislation to do exactly what we want, and have this man
25 to enforce it. I don't think that we are talking about what he
26 can do now as much as what we need to do in the law.

27 We have several bills laying around that we need to
28

1 put some amendments in, but we as representatives of those
2 providers and providers have a job cut out, and we need the
3 support of Mr. Gould and yours to make sure this will work.
4

5 And I'm here.

6 SENATOR CRAVEN: Thank you, Mr. Hausey.

7 Next gentleman, please.

8 MR. JOHNSON: Thank you. My name is James T.
9 Johnson, III, and I am the President of AMARCH, which is the
10 Association for Minority Adolescents in Residential Care Homes.

11 We are basically taking a position that we're not
12 opposing his confirmation, but we do have some concerns that we
13 would like to address.

14 SENATOR CRAVEN: Fine. Why don't you express
15 those.

16 MR. JOHNSON: Our first concern is, we've heard
17 this over and over again, has to deal with the appeals process.
18 We feel that the appeals process needs to be restructured to
19 make it accessible to providers. And I'm sure this is just a
20 reiteration of what a couple other people have said before me.

21 Under the current structure, only one percent or
22 less can afford to appeal after they've been closed down.

23 Also, that a process should be implemented to
24 address the complaints against the Department staff, because as
25 it is, many providers have placed complaints against Department
26 employees, and they feel that the Department has not basically
27 acknowledged their complaints, or looked into it and gave a
28 concerted effort to address their concerns.

1 Also, I would like to request that the Rules
2 Committee inquire to the Agency as to their position with
3 respect to institutionalization of our children versus
4 community-based programs. We would like to know, basically,
5 where they stand and what do they feel about community-based
6 programs.

7 Also, our membership is having a very difficult
8 time dealing with the current rate setting system. This
9 system, the way it is sets up now, it penalizes providers who
10 cannot maintain higher than a 90 percent occupancy rate. So,
11 if the providers -- and this is due to no fault of their own --
12 if they cannot maintain at least 90 percent of occupancy rate,
13 they're then being told that they have to pay back these funds
14 to the Department of Social Services. And since the program is
15 already experiencing financial constraints due to the lack of
16 placements, then I can ill imagine that how they're going to be
17 able to have the capability to pay back these funds.

18 We feel that our concerns are so vital to our
19 ability to properly address the needs of our children that we
20 are willing and would like to set up a meeting with Mr. Gould
21 or the interim Director, John Healey, to address these
22 concerns.

23 CHAIRMAN ROBERTI: During the three-week interim,
24 before we take up Mr. Gould's confirmation for a final vote,
25 I'm sure Mr. Gould will be happy to meet with you.

26 MR. JOHNSON: One last thing.

27 I think that there should be something established
28

1 that would allow the Department to look into these providers
2 that have been closed down that have not been afforded due
3 process. And basically in conjunction with their Technical
4 Assistant Unit that Mr. Gould has mentioned, to work with these
5 providers. And if due process was not administered to these
6 facilities, to allow them to obtain their licenses.

7
8 I do believe that we can show in many cases that a
9 lot of the providers sincerely attempted to address the
10 concerns of Community Care Licensing, but Community Care
11 Licensing has demonstrated over the past a very biased
12 perspective with providers in the job that we have.

13 I also think that with respect to Community Care
14 Licensing, that an affirmative action program, especially
15 speaking about minority males, we should have more evaluators,
16 since a disproportionate amount of children that are serviced
17 in this state are African-American males. And I think a lack
18 of cultural sensitivity is evident here when we're speaking of
19 Community Care Licensing and their beliefs. And I do believe
20 that it is a mind-set of Community Care Licensing that stems
21 from the Deputy Director Fred Miller on down, because these
22 practices that they are currently doing to providers, they've
23 been doing for many years. It's just recently that people have
24 started to speak up and just not take the abuse.

25 That's all that I have, sir.

26 SENATOR CRAVEN: Thank you, sir.

27 CHAIRMAN ROBERTI: Are there any other witnesses?

28 SENATOR CRAVEN: Mr. Chairman, I think that that

1 concludes the witnesses in opposition, but there are some of
2 those here in favor.

3 CHAIRMAN ROBERTI: Yes, please come forward.

4 MR. SEATON-MSEMAJI: Mr. Chairman and Members, my
5 name is Ken Seaton-Msemaji, representing the United Domestic
6 Workers of America.

7 A few minutes ago when a young lady was testifying,
8 and she suggested that if she got some cooperation out of the
9 Department, it would be a first.

10 Well, I want to tell you about our first. For
11 years, the Department of Social Services has been as hostile as
12 we've heard described here today and worse in the home care
13 area. They have, in our judgment and experience, many times
14 abused the regulations and laws that exist, have gutted quality
15 from the program, have lied to committees of this Legislature,
16 and much, much worse. Very, very hostile. Never any
17 flexibility or open-mindedness, and that went on for a long,
18 long time.

19 Many of you will remember that we would come to you
20 every year at the beginning of budget time, complaining about
21 the preposterous proposals about cutting home care that, if
22 were ever enacted, would have raised the cost, not lowered the
23 cost. And we didn't come to all of you during the year, but we
24 would come to Senator Mello and sometimes Senator Craven with
25 smaller items of a similar kind of a nature. And that just
26 went on and on and on, year after year.

27 Then Mr. Gould came in and brought his people in.
28

1 And I have to admit here today that there's been a drastic
2 change. Our ideas are welcome there now. The accessibility of
3 Mr. Gould and the people working under him is enormous. We get
4 a serious and honest consideration of our ideas and opinions.

5 We've worked through several problems that just a
6 couple of years ago, we would have had to battle through, and
7 then come to you all to save us.

8 What we have now is people, the acting Director,
9 who comes out. He went to San Mateo County. Spent hours and
10 hours talking to representatives of provider companies.
11 Talking to home attendant employees. Talking to client
12 recipients, both disabled and elderly, to see what it is that
13 they're really experiencing. Taking the time to learn,
14 soliciting ideas and so forth. There is a night and day
15 difference with regard to in-home supportive services in that
16 Department since Mr. Gould and his associates have taken their
17 positions.

18 Some of the same people who were there before that
19 conducted much of what we consider the unacceptable behavior,
20 some of those people are still there, but they behave very
21 differently now.

22 And so, we are here to offer our support in
23 confirmation. Mr. Gould did not ask me to come forth on his
24 behalf. He did not ask me to write a letter. When I found out
25 it was coming up, I thought it was important enough to come
26 before you, because it is a day and night difference.

27 And you may notice that we haven't been around to
28

1 bother you all as much in the last year or so as we normally
2 do.

3 So, we ask for your positive consideration. Thank
4 you.

5 CHAIRMAN ROBERTI: Yes, Senator Mello.

6 SENATOR MELLO: I don't have a question, but I
7 think he brings up an interesting point.

8 I don't think it was established. Mr. and Mrs.
9 Dobson are still here. I want to ask them, when did this
10 incident happen in your group home? Was it before Mr. Gould
11 came aboard?

12 MS. DOBSON: November 24th, 1990, when the incident
13 happened and the lady was taken to the locked facility.

14 SENATOR MELLO: So it was in 1990.

15 MS. DOBSON: Then the facility's TSO was January
16 25th, 1991.

17 SENATOR MELLO: He got appointed, I think, in April
18 of '91.

19 Mr. Stevens who was here earlier, I think he
20 mentioned something about the 4th of July. I guess he's gone
21 already. I failed to ask whether or not it was the 4th of July
22 of '91 or of 1990.

23 FROM THE AUDIENCE: It was '91.

24 SENATOR MELLO: So, that's during the time Mr.
25 Gould was then there.

26 Thank you very much. I just wanted to get
27 established that at least as you pointed out, you've
28

1 experienced a negative relationship with the Department before,
2 and now he's turned that around.

3 And the Dobson's incident, I guess, happened before
4 Mr. Gould took over as Secretary of the Agency.

5 SENATOR CRAVEN: On somebody else's watch.

6 MR. SEATON-MSEMAJI: Senator, it may be important
7 to add that the Department nor the Agency agrees with us on
8 every single thing, but what we get now that we didn't get
9 before is an honest consideration, an opportunity to vigorously
10 debate and pursue our point of view, and they're inclined to
11 try to find ways to make things work, and to try to find ways
12 to be flexible and give the benefit of the doubt.

13 But they don't roll over and play dead. They're
14 just reasonable. And before, we couldn't get any reasonable
15 response ever in years.

16 SENATOR MELLO: Thank you.

17 CHAIRMAN ROBERTI: Thank you very much.

18 Is there anybody else who wishes to testify?

19 Then, Mr. Gould, we'll let you conclude,
20 understanding you get to come back again.

21 MR. GOULD: Well, I think we've had a thorough
22 discussion of the issues, and I'll look forward to joining you
23 in three weeks.

24 CHAIRMAN ROBERTI: Very good, thank you.

25 We will reset this hearing in three weeks for
26 limited testimony and the vote.

27 Thank you.
28

1 MR. GOULD: Thank you.

2 CHAIRMAN ROBERTI: And we're going to break again.

3 [Thereupon a brief recess was taken.]

4 CHAIRMAN ROBERTI: The Committee will come to
5 order.

6 We have before us two more gubernatorial
7 confirmations, and the first of these is Kenneth M. Keller,
8 Chief of the Bureau of Electronic and Appliance Repair.

9 Mr. Keller, we will ask you what we ask all the
10 Governor's appointees, and that is why you are qualified to
11 assume this position.

12 MR. KELLER: Thank you, Senator, Senators. I
13 appreciate the opportunity to tell you a little bit about that.

14 I've provided everybody with a written statement
15 that goes into a little bit of detail about the Bureau and
16 about myself, so I'll try to summarize in the interests of
17 time.

18 This is my first job in government. I've been in
19 the private sector for the first 40 years of my life. I moved
20 to the State of California from Michigan in 1983. I've been in
21 the printing business for most of my adult life.

22 Most of the time in the printing business, I've
23 been in the small business end, businesses of \$5 million annual
24 gross or less; businesses with 50 employers or fewer. And as a
25 result, I've learned to wear many hats in trying to accomplish
26 tasks that need to be done. I've been a salesman. I've been
27 sales management. I've been in labor relations. I've been in
28

1 new product development. I've been in customer relations.

2 This experience has served me well to be part of
3 Jim Conran's team in the Department of Consumer Affairs.
4

5 I think you've heard a lot of testimony from Jim
6 about what the aims of the Department are, and I just want to
7 reiterate and reconfirm that our Bureau, which is charged with
8 enforcing the laws dealing with the repair of consumer
9 electronics and major home appliances, is dedicated to strict
10 enforcement of the law, aggressive enforcement of the law, and
11 trying to be ahead of the consumer electronics market which
12 changes dramatically from year to year, such that we have items
13 that are on the consumer market that are not covered by our
14 statutes, and we statutorily cannot investigate and mediate
15 complaints. We're working on legislation right now so that
16 that can be remedied and we can become current with the market.

17 Under Jim's leadership, we will continue to try to
18 find ways to be ahead of the market rather than always catching
19 up behind it. We've -- you might be interested to note that
20 my predecessor was appointed by Governor Ronald Reagan in the
21 last part of his term, and I don't know whether you've had a
22 nominee for this position come before you in a long time. So,
23 a lot of things have happened in this fields that we'll work
24 very hard to try to change.

25 We're trying to increase enforcement as
26 dramatically as we can with the resources that we have, and to
27 try to look into new areas that are important for consumers.
28 And the area that -- two areas that we've been charged to take

1 a look at include whether there should be certification of
2 technicians who do the repair work in the State of California,
3 and whether there should be stricter enforcement of the
4 disclosure laws and other problems in the service contract
5 area.

6 Service contracts are currently about a billion
7 dollars' worth of -- they're about a billion dollars' worth of
8 service contracts sold in the State of California per year.
9 There have been a number of bankruptcies of companies that have
10 been selling these, possibly because of pawnsey [sic] schemes
11 or pyramid schemes that have -- that's what's bilked consumers
12 out of money, promising to make repairs and then disappearing
13 with the money.

14 There are also problems with the enforcement of the
15 disclosure laws. Consumers don't know their cancellation
16 rights. They don't know their rights -- other rights under the
17 contract which the law provides.

18 And we are moving very aggressively to remedy those
19 situations, to seek statutory authority to enforce the laws
20 that are on the books to protect consumers in these new areas
21 that have come up in the '80s and '90s in the Department of
22 Consumer Affairs.

23 I think I'll conclude there. That is the main
24 thrust of what the Bureau is going to be doing under Jim's
25 leadership.

26 Just maybe -- just finally to remark that we are
27 part of a team, and we're working very closely with Jim and the
28

1 leadership in the Department to make sure that we have put the
2 word "consumer" back in consumer protection.

3 CHAIRMAN ROBERTI: Thank you.

4 Are there any witnesses in support or opposition?

5 Any questions?

6 SENATOR CRAVEN: Move Mr. Keller.

7 CHAIRMAN ROBERTI: Senator Craven moves Mr. Keller.

8 You're going to get off easy, Mr. Keller, or we're
9 tired.

10 [Laughter.]

11 MR. KELLER: I hadn't noticed that, Senator.

12 CHAIRMAN ROBERTI: Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye.

16 Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Mello Aye.

19 Senator Petris. Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Craven Aye.

22 Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 SECRETARY WEBB: Roberti Aye.

25 CHAIRMAN ROBERTI: The vote is four to zero;
26 confirmation's recommended to the Floor.

27 Congratulations.
28

1 MR. KELLER: Senators, I appreciate it.

2 CHAIRMAN ROBERTI: The next confirmation is that of
3 Mr. James R. Schoning, Chief of the Bureau of Automotive
4 Repair, Department of Consumer Affairs.

5 MR. SCHONING: Senators, I'm pleased to be here
6 before you.

7 I'm also mindful that I am all that stands between
8 you and your evening plans.

9 [Laughter.]

10 CHAIRMAN ROBERTI: That's right. We'll get you out
11 of here real quick, one way or the other.

12 [Laughter.]

13 CHAIRMAN ROBERTI: Why don't you tell us why you
14 feel you're qualified to assume this position?

15 MR. SCHONING: Thank you.

16 I began my career here what seems like only
17 yesterday, working for the State Legislature in 1969. I had
18 the privilege of serving as Chief Administrative Officer in the
19 Assembly, and then as Assistant to the Minority Leader as
20 things changed. And for the last 15 years, I've been on the
21 staff of the Coro Foundation, which is, as many of you I think
22 know, is a nonprofit, nonpartisan organization which
23 specializes in training citizens for more effective public
24 service careers.

25 In addition to serving Coro for more than 10 years
26 in California, I had the opportunity to help Coro begin its
27 operations in New York City for the period from 1983 to 1988.

1 In both New York and Los Angeles, I -- my responsibilities were
2 to work with culturally diverse men and women of all ages who
3 were seeking, again, to learn how they could make a more useful
4 contribution. My job was to help them learn how the various
5 legitimate sectors of our society work together, what their
6 needs are, and how you can get members from each of these
7 sectors to see how their own self-interest is tied to the
8 health of our society as a whole.

9 I think this experience is proper qualification for
10 my present responsibilities, if you concur that I be Chief of
11 the Bureau of Automotive Repair.

12 I might say, I'm honored to serve on a team that
13 the spirit has been set by the Governor who appointed me, and
14 our Agency Secretary, and our Director, from whom you've
15 already heard.

16 I hope that five initiatives which we've already
17 begun to work on would give you some indication of where we
18 think we're going with the Bureau. First, there's no doubt
19 that over the past eight years, at least, management of the
20 State Smog Check Program has been the BAR's top priority. And
21 as the federal government makes known the details and
22 regulatory aspects of the 1990 Clean Air Act amendments, we
23 promise to work closely with each of you on whatever changes,
24 if any, are going to be required to the state's Inspection and
25 Maintenance Program.

26 I believe we've made a solid beginning in the
27 relationships that will be necessary for us to move ahead in
28

1 that respect. We're working closely with the Legislators, with
2 the principle legislative author of that program, who is
3 Senator Presley, and with the Legislature's own inspection and
4 maintenance review committee, with the automobile repair
5 industry, as well as with the broader business community which
6 has a stake in clean air as well. We're, I believe, in good
7 contact with environment groups, other state agencies like the
8 Air Resources Board, organizations at the federal level, the
9 Environment Protection Agency, and so forth.

10 A second area of our responsibility and our chief
11 responsibility, again, is to put consumer protection back into
12 the flag of the BAR the way it was before the Smog Check
13 Program came along and dominated the organization's attention
14 for the last several years.

15 Given the continued dependence Californians have on
16 the automobile, as resources are shrinking for other priorities
17 as we've heard this afternoon, we believe we have to do a lot
18 more to assure citizens at least of a fair and reliable
19 marketplace when it comes to automobile repairs. As Director
20 Conran indicated, we're doing this through a more aggressive,
21 more visible enforcement. One small example, we've initiated
22 124 disciplinary actions during the first six months of the
23 present fiscal year, in contrast to 113 over the entire
24 previous fiscal year.

25 We think we need to send a clear message to those
26 who victimize motorists that we will not tolerate their illegal
27 behavior, and we will not allow them to damage the reputation
28

1 of the honest small business men and women in the repair
2 industry.

3 A wise man once said that we should never
4 underestimate the intelligence of the American people, but we
5 should never overestimate their supply of information at any
6 given point in time. And at least as important as the first
7 two themes we've adopted is the third, and it's even more
8 difficult, and that's the whole question of public awareness:
9 reaching motorists who have the -- and getting them the
10 information they need to protect themselves in the marketplace,
11 and recruiting them to be our partners in our consumer
12 protection and our air quality efforts. That's why we
13 publicize our enforcement, why we communicate in multiple
14 languages through our publications, our toll-free telephone
15 numbers, and why we conduct a wide variety of public education
16 awareness activities.

17 I know time is short, but I have to share with you
18 a fourth area of concern. I'm afraid it's not unique to the
19 automobile repair industry. The technology of our new cars has
20 overtaken the professional skills of many of those who earn
21 their livings in the industry. California needs skilled
22 repairmen, both to give reliable repairs and to help clean the
23 air.

24 As with other challenges to our workforce, we don't
25 have any overnight miracles to announce to you today, but we're
26 trying to serve as a catalyst to help the repair industry in
27 its struggle to update its skills and attract young men and
28

1 women with the science and the math and the electronics that
2 are required to work on today's computer-controlled cars.

3
4 Finally, we're organizing ourselves internally for
5 the future. As a state agency, we're fortunate to have a
6 wonderful set of employees who enjoy what they do. They do it
7 well, and they believe very deeply in our mission. And we're
8 incorporating the principles of total quality management that
9 are aimed at keeping that drive for excellence moving forward.

10 Even at this hour, I'm hoping you can see that I'm
11 excited with this opportunity, and I'm grateful to be before
12 you. I look forward to working with you, and I'd be happy to
13 answer any questions you might have.

14 CHAIRMAN ROBERTI: Are you thinking of initiating
15 any programs to keep auto repair people up to date on
16 technology? I didn't quite catch --

17 MR. SCHONING: I didn't give you the solution to
18 the problem.

19 CHAIRMAN ROBERTI: It may be insoluble.

20 MR. SCHONING: We're working on a wide variety of
21 fronts. We're trying to -- the long-range solution is how do
22 we reach young people when they're deciding what they want to
23 be when they grow up, and how do we attract those kinds of
24 folks into the industry in the first place.

25 I think there's a good living to be earned out
26 there for those who get the proper preparation, but it's no
27 longer just grab a monkey wrench. So, we need to reach young
28 people.

1 We're also working very closely at the other end of
2 the scale with people my age who are looking at a very
3 different automobile than they were 20 years ago when they came
4 into the business. We're working with the industry to get
5 additional training through federal grants. The Environmental
6 Protection Agency has some monies available to help implement
7 educational aspects of the Clean Air Act. And our own
8 Employment and Training Panel has made funds available for
9 training to the automotive repair industry in the past, and
10 we're attempting to be a broker and a catalyst in that effort
11 again.

12 Beyond that, we're convening representatives of the
13 repair industry, and the education fields, and anyone who will
14 come and join us, the auto clubs, anyone else from the consumer
15 movement, the environmental movement, who sees that sooner or
16 later, it's automobile repairs that -- that fix the cars, and
17 that's what cleans the air.

18 So, we're doing our best. We're eager to hear any
19 new solutions and ideas.

20 It's a tough nut. It's no easier or more difficult
21 than all of the other challenges that face our public education
22 and our workforce.

23 CHAIRMAN ROBERTI: Are there any questions?

24 Is there anybody here in support or in opposition?

25 SENATOR CRAVEN: Move Mr. Schoning.

26 CHAIRMAN ROBERTI: Senator Craven moves.

27 SENATOR BEVERLY: Mr. Chairman, you and I remember
28

1 Mr. Schoning as the CEO. I think he was reasonably responsive
2 in those days; wasn't he?

3 CHAIRMAN ROBERTI: That's right.

4 SENATOR BEVERLY: It's been so long, I've
5 forgotten.

6 I'll join Senator Craven in moving the approval.

7 SENATOR CRAVEN: Senator Craven moves. Secretary
8 will call the roll.

9 SECRETARY WEBB: Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye.

12 Senator Mello.

13 SENATOR MELLO: Aye.

14 SECRETARY WEBB: Mello Aye.

15 Senator Petris. Senator Craven.

16 SENATOR CRAVEN: Aye.

17 SECRETARY WEBB: Craven Aye.

18 Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 SECRETARY WEBB: Roberti Aye.

21 CHAIRMAN ROBERTI: The vote is four to zero;
22 confirmation is recommended to the Floor.

23 Congratulations and good luck.

24 MR. SCHONING: Thank you, sir.

25 [Thereupon this portion of the
26 Senate Rules Committee hearing
27 was terminated at approximately
28 5:45 P.M.]

--oo0oo--

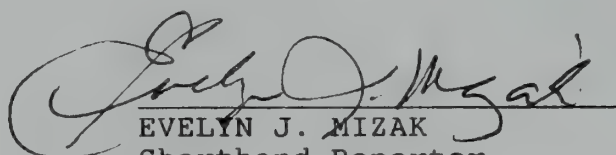
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 1992.


EVELYN J. MIZAK
Shorthand Reporter

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